

The Cleveland Municipal Court

In partnership with the

Cleveland Metropolitan Bar Association

Present the

2013 Mock Trial Competition

For the

Cleveland Metropolitan School District

Friday, May 3, 2013

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17th ANNUAL CLEVELAND MUNICIPAL COURT MOCK TRIAL COMPETITION

CASE CAPSULE

The case for the 17th annual Cleveland Municipal Court Mock Trial Competition involves the criminal prosecution of Bobbie Simon, a social studies teacher at Great Lakes High School, who is charged with Aggravated Menacing (CMC 621.06) and violation of a law that prohibits bringing firearms into a school (ORC 2923.122). The latter is a fifth degree felony. An agreement with the County Prosecutor's Office and the Cleveland Municipal Court allows the court to handle selected low-level felonies. Assume for the purpose of this exercise that Cleveland maintains jurisdiction over this particular felony offense. The Aggravated Menacing charge is a misdemeanor of the first degree.

Simon, a former army lieutenant, was not charged with Carrying a Concealed Weapon because s/he did have a Conceal and Carry permit pursuant to ORC 2923.125. However, the Great Lakes Municipal School District does not allow teachers, parents or anyone except law enforcement personnel to bring firearms onto school property. There is a decal required by ORC 2923.1212 (see Exhibit #1) at all entrances which alerts anyone entering the premises to that fact. Simon was aware of the prohibition but thought s/he, the students, and other occupants of the school building would be much safer if there was someone on site who had a weapon in case there was a potentially lethal incident.

Each year, the Mock Trial case addresses serious matters facing society today. By affording students an opportunity to wrestle with large societal problems within a structured format, the Mock Trial Competition strives to provide a powerful and timely educational experience. It is our goal that students will conduct a cooperative, vigorous, and comprehensive analysis of these materials with the careful guidance of teachers and coaches. This year's case

offers opportunities to discuss issues created by bullying and the arming of teachers in the classroom, and the essay element provides another opportunity to explore these issues. By participating in the mock trial, students will develop a greater capacity to deal with the important issues identified in *The City of Cleveland v. Simon*.

This is a hypothetical case and is loosely modeled on a composite of real cases that have actually come before the court. The people, statements, and facts are entirely fictional and do not represent any actual case, controversy, or individual party. The challenges in the case are whether the City of Cleveland (the prosecution) can prove its case beyond a reasonable doubt to get a conviction, and whether the defense can raise enough reasonable doubt to get an acquittal for the defendant. The ultimate aim of a mock trial competition is to improve students' listening, speaking, reading, and reasoning skills. Thus, the outcome of this hypothetical case is not a factor in the competition, nor is it designed to promote either a prosecution view or a defense view. There should be adequate facts to support both sides equally. Students should be encouraged to handle both sides of the issue as, ultimately, the students will be judged on their skills and quick-wittedness and not the outcome of the case.

The charges in *The City of Cleveland v. Simon* stem from an incident on November 15, 2012 in which the social studies teacher, Bobbie Simon, used a personal handgun to shoot a student, Avery Williams, who was threatening to shoot another student, Levi Cooper, who had been bullying Avery. This happened in a classroom of 25 students at the end of third period, right before lunch. Right before the bell rang, Avery Williams stood up, grabbed a gun from inside his/her jacket and pointed it at Levi Cooper. Avery said, "I'm tired of you and I'm not going to take it anymore!" Levi was sitting by the window. Avery fired at Levi, but missed and the bullet struck the window. Bobbie Simon pulled a gun from his/her briefcase and fired at Avery before s/he could get another round off. Avery, who claims Simon threatened him/her the

day before, was struck in the shoulder by Simon's bullet and was taken to the hospital where s/he was treated and released. Levi Cooper was not hurt. No other students were hurt either but the event induced panic in the students, many of whom later said they were traumatized by the incident. The panic spread throughout the school and eventually everyone was evacuated.

Immediately after the incident, the police were called and Bobbie Simon was handcuffed and arrested. The police obtained a search warrant and searched Simon's home because of an anonymous tip from someone who claimed Simon often bragged about owning illegal assault weapons. Several shotguns and handguns were confiscated, but no illegal guns were found at Simon's home.

Bobbie Simon is adamant that s/he saved Levi Cooper's life and should not have been arrested or prosecuted. Simon thinks s/he is a hero. Many people at the school and in the community are supporting him/her and the idea that teachers should be armed in school in order to prevent some of the tragedies seen at Columbine, Virginia Tech, and more recently Sandy Hook Elementary School in Newtown, Connecticut. Simon maintains that the administration should be blamed for not taking Williams' reports about being bullied seriously. If they had done something to address the bullying issue, then perhaps Williams would not have felt compelled to bring a gun to school and take matters into his/her own hands. Then s/he would not have had to shoot Avery in the shoulder to neutralize him/her. Simon thinks Avery probably would have killed Levi and maybe several other students as well if s/he had not intervened. Simon also adamantly rejects claims by Avery that s/he threatened Avery with bodily harm the day before or that s/he encouraged Avery to bring a gun to school to defend himself against Levi.

Levi Cooper is the perceived leader of a group that calls itself the High-Five Mafia. Members of the High-Five Mafia, especially Levi, have allegedly bullied Avery throughout their high school years. As a result, Avery Williams had apparently reached a point where s/he had

had enough abuse and, on November 15, 2012, came to school armed for a show-down with his/her main tormentor, Levi Cooper.

Bullying is a growing problem in our schools and incidents are becoming more and more controversial. At Mentor High School, here in Ohio, there have been four suicides of students who had claimed to be relentlessly picked on, and their families have lawsuits pending against the school for their alleged failure to recognize and stop the bullying activity. In 2007, Asa Coon, a student at SuccessTech here in Cleveland, brought a gun to school and shot two teachers and two students before turning the gun on himself. Allegedly, he had been a victim of bullying. T.J. Lane, age 18, is currently under murder indictments for shooting five students, killing three of them, in the Chardon High School cafeteria. It had been rumored that he also had been bullied at school. The most recent, and arguably the most horrific school shooting took place December 14, 2012 when Adam Lanza, age 20, went to Sandy Hook Elementary School in Newtown, Connecticut and shot to death 20 kindergarteners and first graders and six teachers and staff. He had killed his mother, using a weapon from her extensive legal collection, before heading to the campus. Most people probably know of instances where someone at school was regularly mistreated, harassed, teased, or beaten up – often to the delight or apathy of onlookers. Many people also know of kids who may have confided in them the desire to bring weapons to school in order to “even the score.”

This year’s Mock Trial problem seeks to get teens and authority figures to view bullying in a more serious, very real light. It also highlights the arming of teachers and school officials, a new issue that has arisen as a result of several high-profile shootings on school campuses, often by students who felt victimized. There are people who are advocating that all teachers should be trained and armed so they can prevent, or at least lessen the extent of, a school shooting.

However, opponents question whether this is a smart thing to do or a gross and dangerous

overreaction. Where will the gun be kept? How would it be easily accessible in the event of an actual, life-threatening emergency? Should the parents be notified if a teacher has a weapon in the classroom? What if a child gets to the gun? What will prevent a teacher from “snapping” and using the gun inappropriately? How will teachers avoid jeopardizing the lives of students in the effort to shoot someone who is a perceived threat?

Bullying includes a wide variety of behaviors, but all involve a person or a group repeatedly trying to harm someone who is weaker or more vulnerable. It can involve direct attacks (such as hitting, threatening or intimidating, maliciously teasing and taunting, name-calling, making sexual remarks, and stealing or damaging belongings) or more subtle, indirect attacks (such as spreading rumors or encouraging others to reject or exclude someone).

Bullying occurs once every seven minutes. That means that while you read this section of your Mock Trial case materials, it is likely that at least one bullying incident will have occurred. In schools across America, one in three students reports being bullied weekly. The National Education Association estimated that 160,000 children miss school every day due to fear of attack or intimidation by other students. Fifteen percent of all school absenteeism is directly related to fears of being bullied at school. *Source: National Education Association (www.nea.org) and MDNBD Facts & Statistics (www.makebeatsnotbeatdowns.org).*

Teen bullying can lead teenagers to feel tense, anxious, and afraid. It can affect their concentration in school, and can lead them to avoid school in some cases. If teen bullying continues for some time, it can begin to affect teens' self-esteem and feelings of self-worth. It also can increase their social isolation, leading them to become withdrawn and depressed, anxious and insecure. In extreme cases, bullying can be devastating for teens, with long-term consequences. Some teens feel compelled to take drastic measures, such as carrying weapons for protection or seeking violent revenge. Others, in desperation, even consider suicide. Researchers

have found that years later, long after the bullying has stopped, adults who were bullied as teens have higher levels of depression and poorer self-esteem than other adults. *Source: Family First Aid* (www.familyfirstaid.org/bullying.html).

The numbers continue to rise every month...

- It is estimated that 160,000 children miss school every day due to fear of attack or intimidation by other students.
- American schools harbor approximately 2.1 million bullies and 2.7 million of their victims.
- 15% of all school absenteeism is directly related to fears of being bullied at school.
- 71% of students report incidents of bullying as a problem at their school.
- One out of 20 students has seen a student with a gun at school.
- Bullying statistics say revenge is the strongest motivation for school shootings.
- 87% of students said shootings are motivated by a desire to “get back at those who have hurt them.”
- 86% of students said “other kids picking on them, making fun of them or bullying them” causes teenagers to turn to lethal violence in the schools.
- 61% of students said students shoot others because they have been victims of physical abuse at home.
- 54% of students said witnessing physical abuse at home can lead to violence in school.
- According to bullying statistics, one out of every 10 students who drops out of school does so because of repeated bullying.
- Harassment and bullying have been linked to 75% of school-shooting incidents.

Source: MDNBD Facts & Statistics (www.makebeatsnotbeatdowns.org).

The Law

Second Amendment to the U.S. Constitution: A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Supreme Court: *District of Columbia v. Heller* (554 U.S. 570) was a landmark firearms case in 2008 in which the U.S. Supreme Court in 2008 held for the first time that the Second Amendment of the U.S. Constitution protects an *individual* right to possess a firearm (unconnected with service in a militia) and to use that firearm for traditionally lawful purposes (such as self-defense within the home). The decision overturned a law in Washington, D.C. that banned handgun possession and/or registration in the District. Dick Heller, a special police officer in D.C., sued after he was denied an application to keep a handgun for private use in his own home.

The majority of justices of the Supreme Court held that the text of the Second Amendment and its history demonstrate that the right to keep and bear arms was intended to be an individual one, not limited just to members of militias (non-government military groups acting for common defense). The Court did note that the right is not unlimited, citing reasonable gun control laws such as restrictions on possession by felons and the mentally ill, as well as laws prohibiting carrying firearms in sensitive places such as schools and government buildings.

Relevant sections of the Ohio Revised Code (ORC):

2923.126 Duties of licensed individual

(A) A license to carry a concealed handgun that is issued under section 2923.125 of the Revised Code on or after March 14, 2007, shall expire five years after the date of issuance, and a license that is so issued prior to March 14, 2007, shall expire four years after the date of issuance. A licensee who has been issued a license under that section shall be granted a grace period of thirty days after the licensee's license expires during which the licensee's license remains valid. Except as provided in divisions (B) and (C) of this section, a licensee who has been issued a license under section 2923.125 or 2923.1213 of the Revised Code may carry a concealed handgun anywhere in this state if the licensee also carries a valid license and valid identification when the licensee is in actual possession of a concealed handgun. The licensee shall give notice of any change in the licensee's residence address to the sheriff who issued the license within forty-five days after that change.

If a licensee is the driver or an occupant of a motor vehicle that is stopped as the result of a traffic stop or a stop for another law enforcement purpose and if the licensee is transporting or has a loaded handgun in the motor vehicle at that time, the licensee shall promptly inform any law enforcement officer who approaches the vehicle while stopped that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently possesses or has a loaded handgun; the licensee shall not knowingly disregard or fail to comply with lawful orders of a law enforcement officer given while the motor vehicle is stopped, knowingly fail to remain in the motor vehicle while stopped, or knowingly fail to

keep the licensee's hands in plain sight after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law enforcement officer; and the licensee shall not knowingly remove, attempt to remove, grasp, or hold the loaded handgun or knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of division (E) of section 2923.16 of the Revised Code, after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves. Additionally, if a licensee is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in section 5503.04 of the Revised Code and if the licensee is transporting or has a loaded handgun in the commercial motor vehicle at that time, the licensee shall promptly inform the employee of the unit who approaches the vehicle while stopped that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently possesses or has a loaded handgun.

If a licensee is stopped for a law enforcement purpose and if the licensee is carrying a concealed handgun at the time the officer approaches, the licensee shall promptly inform any law enforcement officer who approaches the licensee while stopped that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently is carrying a concealed handgun; the licensee shall not knowingly disregard or fail to comply with lawful orders of a law enforcement officer given while the licensee is stopped or knowingly fail to keep the licensee's hands in plain sight after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law enforcement officer; and the licensee shall not knowingly remove, attempt to remove, grasp, or hold the loaded handgun or knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of division (B) of section 2923.12 of the Revised Code, after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves.

(B) A valid license issued under section 2923.125 or 2923.1213 of the Revised Code does not authorize the licensee to carry a concealed handgun in any manner prohibited under division (B) of section 2923.12 of the Revised Code or in any manner prohibited under section 2923.16 of the Revised Code. A valid license does not authorize the licensee to carry a concealed handgun into any of the following places: *List omitted of enumerated, or specifically prohibited, no-carry zones in the statutes.*

(1) A police station, sheriff's office, or state highway patrol station, premises controlled by the bureau of criminal identification and investigation, a state correctional institution, jail, workhouse, or other detention facility, an airport passenger terminal, or an institution that is maintained, operated, managed, and governed pursuant to division (A) of section 5119.02 of the Revised Code or division (A)(1) of section 5123.03 of the Revised Code;

(2) A school safety zone if the licensee's carrying the concealed handgun is in violation of section 2923.122 of the Revised Code;

(3) A courthouse or another building or structure in which a courtroom is located, in violation of section 2923.123 of the Revised Code;

(4) Any premises or open air arena for which a D permit has been issued under Chapter 4303. of the Revised Code if the licensee's carrying the concealed handgun is in violation of section 2923.121 of the Revised Code;

(5) Any premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle;

(6) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;

(7) A child day-care center, a type A family day-care home, a type B family day-care home, or a type C family day-care home, except that this division does not prohibit a licensee who resides in a type A family day-care home, a type B family day-care home, or a type C family day-care home from carrying a concealed handgun at any time in any part of the home that is not dedicated or used for day-care purposes, or from carrying a concealed handgun in a part of the home that is dedicated or used for day-care purposes at any time during which no children, other than children of that licensee, are in the home;

(8) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;

(9) Any building that is a government facility of this state or a political subdivision of this state and that is not a building that is used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility and is not a courthouse or other building or structure in which a courtroom is located that is subject to division (B)(3) of this section;

(10) A place in which federal law prohibits the carrying of handguns.

(C) (1) *Omitted for the purposes of this document.*

(2) (a) A private employer shall be immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto the premises or property of the private employer, including motor vehicles owned by the private employer, unless the private employer acted with malicious purpose. A private employer is immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to the private employer's decision to permit a licensee to bring, or prohibit a licensee from bringing, a handgun onto the premises or property of the private employer. As used in this division, "private employer" includes a private college, university, or other institution of higher education.

(b) *Omitted for the purposes of this document.*

(3) (a) Except as provided in division (C)(3)(b) of this section, the owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by the state, the United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises. Except as otherwise provided in this division, a person who knowingly violates a posted prohibition of that nature is guilty of criminal trespass in violation of division (A)(4) of section 2911.21 of the Revised Code and is guilty of a misdemeanor of the fourth degree. If a person knowingly violates a posted prohibition of that nature and the posted land or premises primarily was a parking lot or other parking facility, the person is not guilty of criminal trespass in violation of division (A)(4) of section 2911.21 of the Revised Code and instead is subject only to a civil cause of action for trespass based on the violation.

(b) A landlord may not prohibit or restrict a tenant who is a licensee and who on or after the effective date of this amendment enters into a rental agreement with the landlord for the use of residential premises, and the tenant's guest while the tenant is present, from lawfully carrying or possessing a handgun on those residential premises.

(c) *Omitted for the purposes of this document.*

(D) *Omitted for the purposes of this document.*

(E) *Omitted for the purposes of this document.*

(F) *Omitted for the purposes of this document.*

(G) As used in this section:

(1) *Omitted for the purposes of this document.*

(2) *Omitted for the purposes of this document.*

(3) "Government facility of this state or a political subdivision of this state" means any of the following:

(a) A building or part of a building that is owned or leased by the government of this state or a political subdivision of this state and where employees of the government of this state or the political subdivision regularly are present for the purpose of performing their official duties as employees of the state or political subdivision;

(b) The office of a deputy registrar serving pursuant to Chapter 4503. of the Revised Code that is used to perform deputy registrar functions.

Effective Date: 04-08-2004; 03-14-2007; 2008 SB184 09-09-2008

2923.1212 Signage prohibiting concealed handguns

(B) The following boards, bodies, and persons, or designees, shall post in the following locations a sign that contains a statement in substantially the following form: "Unless otherwise authorized by law, pursuant to Ohio Revised Code section 2923.122 [2923.12.2], no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance into a school safety zone.":

(1) A board of education of a city, local, exempted village, or joint vocational school district or that board's designee in a conspicuous location in each building and on each parcel of real property owned or controlled by the board;

(2) A governing body of a school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code or that body's designee in a conspicuous location in each building and on each parcel of real property owned or controlled by the school;

(3) The principal or chief administrative officer of a nonpublic school in a conspicuous location on property owned or controlled by that nonpublic school.

2923.122 Illegal conveyance or possession of deadly weapon or dangerous ordnance or of object indistinguishable from firearm in school safety zone

(A) No person shall knowingly convey, or attempt to convey, a deadly weapon or dangerous ordnance into a school safety zone.

(B) No person shall knowingly possess a deadly weapon or dangerous ordnance in a school safety zone.

(C) No person shall knowingly possess an object in a school safety zone if both of the following apply:

(1) The object is indistinguishable from a firearm, whether or not the object is capable of being fired.

(2) The person indicates that the person possesses the object and that it is a firearm, or the person knowingly displays or brandishes the object and indicates that it is a firearm.

(D) (1) This section does not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or a law enforcement officer, who is authorized to carry deadly weapons or dangerous ordnance and is acting within the scope of the officer's, agent's, or employee's duties, a security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment, or any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or to possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization;

(b) Any person who is employed in this state, who is authorized to carry deadly weapons or dangerous ordnance, and who is subject to and in compliance with the requirements of section 109.801 of the Revised Code, unless the appointing authority of the person has expressly specified that the exemption provided in division (D)(1)(b) of this section does not apply to the person.

(2) Division (C) of this section does not apply to premises upon which home schooling is conducted. Division (C) of this section also does not apply to a school administrator, teacher, or employee who possesses an object that is indistinguishable from a firearm for legitimate school purposes during the course of employment, a student who uses an object that is indistinguishable from a firearm under the direction of a school administrator, teacher, or employee, or any other person who with the express prior approval of a school administrator possesses an object that is indistinguishable from a firearm for a legitimate purpose, including the use of the object in a ceremonial activity, a play, reenactment, or other dramatic presentation, or a ROTC activity or another similar use of the object.

(3) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if, at the time of that conveyance, attempted conveyance, or possession of the handgun, all of the following apply:

(a) The person does not enter into a school building or onto school premises and is not at a school activity.

(b) The person is carrying a valid concealed handgun license.

(c) The person is in the school safety zone in accordance with 18 U.S.C.

922(q)(2)(B).

(d) The person is not knowingly in a place described in division (B)(1) or (B)(3) to (10) of section 2923.126 of the Revised Code.

(4) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if at the time of that conveyance, attempted conveyance, or possession of the handgun all of the following apply:

(a) The person is carrying a valid concealed handgun license.

(b) The person is the driver or passenger in a motor vehicle and is in the school safety zone while immediately in the process of picking up or dropping off a child.

(c) The person is not in violation of section 2923.16 of the Revised Code.

(E) (1) Whoever violates division (A) or (B) of this section is guilty of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone. Except as otherwise provided in this division, illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone is a felony of the fifth degree. If the offender previously has been convicted of a violation of this section, illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone is a felony of the fourth degree.

(2) Whoever violates division (C) of this section is guilty of illegal possession of an object indistinguishable from a firearm in a school safety zone. Except as otherwise provided in this division, illegal possession of an object indistinguishable from a firearm in a school safety zone is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, illegal possession of an object indistinguishable from a firearm in a school safety zone is a felony of the fifth degree.

(F) (1) In addition to any other penalty imposed upon a person who is convicted of or pleads guilty to a violation of this section and subject to division (F)(2) of this section, if the offender has not attained nineteen years of age, regardless of whether the offender is attending or is enrolled in a school operated by a board of education or for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code, the court shall impose upon the offender a class four suspension of the offender's probationary driver's license, restricted license, driver's license, commercial driver's license, temporary instruction permit, or probationary commercial driver's license that then is in effect from the range specified in division (A)(4) of section 4510.02 of the Revised Code and shall deny the offender the issuance of any permit or license of that type during the period of the suspension.

(Ord. 100-99. Passed 6-7-99, eff. 6-16-99)

621.06 Aggravated Menacing

(a) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of such other person or member of his immediate family.

(b) Whoever violates this section is guilty of aggravated menacing, a misdemeanor of the first degree.

(RC 2903.21; Ord. No. 1020-76. Passed 6-14-76, eff. 6-18-76)

Penalty Section:

(1) For a misdemeanor of the first degree, not more than one hundred eighty days;

(2) For a misdemeanor of the second degree, not more than ninety days;

(3) For a misdemeanor of the third degree, not more than sixty days;

(4) For a misdemeanor of the fourth degree, not more than thirty days.

(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

WITNESS STATEMENTS

FOR THE PROSECUTION

Statement of Principal Casey Rogers

I've been the principal at Great Lakes High School for only a short time. When the district reorganized, I was assigned here, so, although I've been an administrator for five years, I had been at Cleveland High for just a few weeks after the fall semester started and all this happened. I don't really know a lot of the kids here yet, but I am still familiar with this one group that calls itself the High-Five Mafia, especially Levi Cooper. And of course I know Bobbie Simon. We got off on the wrong foot from the start too. S/He's just so arrogant, thinks s/he knows more than I do about running a school and handling the students. I had to let him/her know that I was the one in charge, not him/her.

And I really don't care what people think. Bobbie Simon broke the law. Teachers and guns don't mix. Just because things worked out the way they did and we didn't have some Columbine massacre, doesn't excuse the fact that s/he brought a gun into my school. What if one of the students had gotten ahold of it? Think about that.

Not that I'm defending him/her, but Avery was only trying to scare Levi. Avery was not trying to kill anyone. Police say there was only one bullet in the gun. And s/he shot way above Levi's head. Avery was so close to Levi that s/he could have hit him if s/he really wanted to.

Bobbie Simon overreacted. S/He was just so eager to show what a "hero" s/he is, wanted to show off, live out some middle-aged fantasy. It doesn't help Simon's case that s/he threatened to "F" Avery up the day before either. Whether or not it was a threat or a very inappropriate remark for a teacher to make to a student, it was *wrong* and makes him/her look like s/he was

following through on a threat. But Mr./Ms. Simon could have easily tackled Avery and taken the gun. S/He was close enough to, it's a small classroom. Now Avery Williams has a bullet wound and is suing Simon, the school, the district and me personally for millions. I don't know about everyone else, but I don't have one cent to give to Avery Williams. And Avery is a criminal now too!

Bobbie Simon is not the police. S/He is not in the army anymore and our school is not a military base. S/He had no right. Apparently, s/he's been carrying this gun into my school everyday in a briefcase with no lock on it that could easily be accessible to one of the students. I'd heard from some of the students that this might be the case, but I dismissed it as a silly rumor – I never would have believed a teacher would be that stupid. I'm surprised that Levi or another student hadn't stolen it before now. That would have been another headline: Student steals gun from teacher in classroom! But s/he just ignores all the signs on all the doors that explicitly show that no guns are allowed. I guess s/he thinks laws don't apply to him/her for some reason.

Now as it relates to Avery and Levi: Could we have done more to prevent this confrontation? In retrospect, probably. But every time someone gets teased, it is not bullying. Some kids are just sensitive. Come on, this is high school, not kindergarten. Some kids need to get a thicker skin. Some of them bring it on themselves because they insist on being ... odd. Most times, if you ignore obnoxious people, they will just go away. Kids today need to learn coping skills. In my day, kids were used to getting hazed by other kids. I got hazed when I joined the cheerleaders. They put shaving cream in my hair, tied my shoelaces together, all kinds of crazy stuff. I laughed it off and did it to the freshmen the next year. They got through it too, laughed it off, did it to the next group, and so on and so on. Back then, they got paddled by teachers, got left out of cliques and sports teams, all that. Kids then were tough. The idea that

someone would resort to bringing a gun to school was absolutely unheard of. Worse comes to worst, we settled disputes with our fists.

We have a security guard, Danny, and he does a fine job securing the school under the management of Lee Davenport, Chief Security Officer for the school district. We have a few fights, a few mouthy kids, but between Danny, the Vice Principal and myself, we handle it all. We did not need all the drama that Bobbie Simon has brought to this school. We're all over the news. People, complete strangers, stop me in the grocery store and ask me what kind of insane asylum I'm running. Frankly, I'm embarrassed because I feel I run a tight ship.

I'll admit that Levi is perhaps my biggest challenge. He is a scary creature and I sort of understand why Avery felt so threatened. But, again, that doesn't justify Avery's or Bobbie's actions. I became aware of Levi the first day because he was sprawled all over the front steps smoking a cigarette even after the late bell had rung. He had these girls standing around with them and they were all smoking too. I give them the benefit of the doubt that it was tobacco and not weed, but I thought I might have smelled something funny in the air. The boys and the girls were all wearing red T-shirts, red ball caps, those skinny jeans and real expensive tennis shoes.

Anyway, I didn't want to get into a major confrontation the first day, so I just made them throw out the cigarettes, come inside and get to homeroom. Levi's tall, I would guess 6'2" at least and has some beady, hateful eyes that make you want to turn away, but I held my gaze until he moved, reluctantly I might add, out of my personal space. The rest of them didn't move until he did, and I was two seconds from calling the security guard who was manning the metal detector to come and take care of these jokers. But, again, I couldn't look weak on my first day. I know Levi's type, and if he thinks he and his crew can run over you, they will.

After that, I would see him in the hallway and he would be leaning over some smaller kid, all up in his personal space, talking about God knows what. Levi would wink at me and go

back to what he was doing. Of course the kid didn't signal that he was in any kind of distress and the bell hadn't rung for the next class, so I didn't interfere. No sense in starting a problem if there isn't one.

Out of curiosity, I did look up Levi's school record: he was an older senior, 19, because he had to repeat eighth grade. For the most part, he's a D-student, has been suspended five times for various infractions, mainly for fighting, and once for stealing a student's iPod out of his locker. I also learned that he has a criminal record. He's on probation now for forgery. I even talked to his probation officer, a Mr. Brian Callaway, who told me that if Levi didn't graduate and perform 200 hours of community work service, that he would be in violation and be sent to prison. Mr. Callaway also said that I should keep my eye on him and keep my distance because he's a shady, scary character.

I did look through Avery's file too. No disciplinary problems, but I see there's been a steady decline in his/her grades. S/He used to get all As and Bs, now it's mainly Bs and Cs, and Ds in phys ed. S/He did have 17 absences last year, and three this year before the incident although the school year has barely started. All unexcused. A parent needs to be called, but that doesn't matter now, does it, in light of the events that just transpired. I also saw that back in 2008, Avery complained that Levi Cooper stole his/her math homework and passed it off as his own. Levi was given three detentions, then Avery withdrew the complaint and the detentions were cancelled. I'm new at Great Lakes High School, so I was not that familiar with what was going on with those two, but it's evident to me that someone should have sat the two of them down for mediation or something a long time ago. Then maybe none of this drama would have happened.

Still, I am shocked that Avery had a gun and that s/he used it to take a shot at Levi, and I am outraged that Bobbie Simon shot Avery. This is like something out of a movie. And I don't

like it one bit. The zero tolerance policy goes for the students, and should go for the teachers too. I don't expect to see either of them back here ever again. Good riddance!

Statement of Avery Williams

First of all, I was not trying to *murder* Levi Cooper. That's preposterous. I can't stand Levi and if he was drowning, I wouldn't throw him a life preserver. But I was not trying to *murder* Levi. I just wanted to scare him. I only had one bullet in the gun. I wasn't even sure if the stupid thing would work. I never shot a gun before in my life. But I felt it was necessary for me to have something to protect myself in school that day.

So I did bring the gun to school. I kind of regretted it as soon as I got here and it felt like I was lugging a ton of bricks in my bookbag even though the gun doesn't weigh that much. But I was constantly aware that I had it with me all day. It was all I could think about. Especially after I got through the metal detector with no problems. There're a lot of books in my bag, the scanner's not that sensitive, and Danny, the security guard, usually just waves me on through anyway because they know I'm not a trouble-making thug. But I don't like guns, I'm scared of them. When I was a kid, I saw a dead body that had been shot. It was not a pretty sight.

Levi Cooper should be sitting here, not me. This kid used to be my friend. But ever since about 9th grade, he has made it his mission to try to terrorize me every chance he gets. Not just me, other people too, but me especially for some unknown reason. He thinks my name is "loser" or "waste of space." I'm sick of it. This kid mugs me in my face every time he sees me, throws me into lockers for no reason at all. The teachers see, but pretend not to. Everyone else just laughs because they're glad it's not them this time. I'm sick of it. He makes me "loan" him money and I give it to him because it's just easier that way. Of course he never pays me back any of it. I work at Rally's and he's "borrowing" half my check sometimes. Last week I "loaned" him \$20 and he still walked me down the hall in a headlock. I know Principal Rogers saw that, but all s/he said was "You kids stop playing around and get to class."

Levi Cooper is crazy. I know his dad used to beat his mother up before he died a few years ago. Maybe Levi got his meanness from him, because Mr. Cooper was really mean and crazy. He was our basketball coach in middle school and you should see how he would get when someone missed a shot or something. Every little game was March Madness to him. I put up with it because my mom really wanted me to play. Otherwise I would have quit in a New York minute.

Okay, so, like, two days ago, Levi told me he needed to borrow \$100 to go toward getting these new Jordans. \$100?! I don't have \$100 to give him. When I told Levi that, he told me that I was dead if I didn't have LEVI'S money by noon today. Then he put his hands in the form of a gun and acted like he was shooting me. He even left me a message on Facebook. (He made me "friend" him, by the way.) The message said "The amount you owe just went up to \$125." One of the pictures on Levi's Facebook page has him wearing a T-shirt that says "Happiness is a warm gun." I saved a screenshot of my Facebook feed the day he posted it so I could have some proof that this kid is crazy and that I'd be crazy not to be scared of him.

Well, I have about \$12 to my name that has to last me until my next paycheck. My mom makes me pay my own cell phone bill and help out with the cable bill. I couldn't just ask her for any money because she's already on a tight budget and it's almost the end of the month. Plus, I didn't want her to worry. My mother, for some reason, still thinks Levi is a nice person – the same kid who used to come over all the time to play video games and stay for dinner. She's clueless too sometimes. She must be the only one in the city, besides you people, who act like they don't know Levi Cooper is a straight-up menace to society and will be in prison or six feet under in about five years. This kid put a freshman in the hospital the very first week of school – Jonathan Lane. He was just using the stairwell on the east side of the school and somehow came back out with a concussion and a busted lip. Everyone knows Levi Cooper beat him up, but

again, no one said anything, even after the principal called EMS. I don't think Jonathan ever came back to school either. I don't even use any of the stairs other than the main ones by the offices in the front of the school. Those're the worst places to be. Levi Cooper and other kids in the group just patrol the stairwells waiting for victims. Everybody knows that. The school bus is bad too. The bus drivers are even more blind and deaf than the teachers. I've seen people get beat senseless on the school bus.

This summer, I was skateboarding down my street and Levi Cooper comes up behind me in his car like he's going to hit me. I had to jump out of the way into some bushes. Then he backs the car up and runs over my custom-crafted board and messes the wheels up. Then he drove away laughing with his crew. I have countless stories about what Levi Cooper has done to me. I stopped telling teachers and principals because nothing ever happens. Levi just gets angrier, says I'm trying to get him in trouble. Well, duh?! But, seriously, I just want this kid to leave me alone.

Levi Cooper is dangerous and unpredictable. Yet you people seem to think I'm the one who's dangerous and unpredictable. I'm not like one of those kids from – where was that mass school killing awhile back? – oh, yeah, Columbine. I am beyond offended that you seem to be putting me in that category.

Anyway, I couldn't sleep all night because I was worried about what Levi Cooper would do to me if I didn't give him money. I decided to post a message for him on Facebook. I wrote "If you mess with me ever again, I will kill you." So, yes, I did say I would kill Levi, but only if he messed with me first. It was conditional. I bet he didn't tell you that part, did he? I still couldn't sleep and at one a.m., I got up out of bed to delete the post before he could see it. But it was too late because he apparently already saw it and had responded "Bring it." Of course all these posts are conveniently deleted now. But I panicked and didn't know what to do. I thought

Levi was going to kill me for sure now. So I took this old revolver out of this tool box that we keep in the basement. I wasn't going to use it, but if Levi stepped to me, I was going to take it out and scare him off. That's all.

We were in social studies and the bell was about to ring. Levi made a gun out of his index finger and thumb and made a gesture like he was going to shoot me once we got outside. I didn't know what to do. I went into panic mode. I pulled out the revolver and shot over his head. I intentionally missed him. You can see the hole in the window. The shot is way over his head. And, like I said, there was only one bullet in the gun.

I hate that stupid school, the stupid teachers and administrators and all the stupid kids who go there. I hate this whole stupid city.

Here I am trying to protect myself the best way I know how and I get expelled AND get charged with felonious assault and all this other stuff. Levi Cooper is a wannabe gangster and he gets to stay in school and keep victimizing people who are too scared to say anything. Even the people who witness him terrorizing people are too chicken to say anything to anyone about it. Levi Cooper should be charged with extortion, and assault. You should be trying to throw the book at him too.

It is kind of funny that Mr./Ms. Simon is being prosecuted and Levi Cooper still gets nothing. I'm still mad about Simon shooting me in my shoulder. I thought s/he of all people would have understood my predicament. S/He sees all the spitballs Levi throws at me. S/He has seen Levi smack me in the head and knock my stuff off my desk. S/He took me aside one day and, after telling me s/he would "F" me up for calling Levi a punk after he kicked me, asked me why I don't stand up to Levi, that people pick on those they perceive as weak. Well, obviously I can't beat Levi in a fight. He outweighs me by at least 50 pounds and he fights all the time. The only thing I can do is call him a punk, but then I get in trouble for that. But Mr./Ms. Simon is

always telling me that I need to “handle myself,” stand up to him once and for all and then Levi and all his minions would leave me alone.

Simon’s all the time talking about the Second Amendment and self-defense and all that B.S. I loved that class. You could almost say that s/he was my favorite teacher. S/He made everything interesting and easy to understand. S/He was my inspiration. But s/he threatened to “F” me up and then s/he shot me the next day. And I’m not dangerous. I’m not the one s/he should be worried about. The thing is, s/he knows about this “thing” between me and Levi. Simon’s supposed to be this super-intelligent, big-time ex-soldier. Well obviously s/he didn’t assess the situation correctly. Stevie Wonder could tell you that I was merely shooting over Levi’s head and was not shooting at Levi. I’m really disappointed. Hurt. Emotionally and physically. I thought s/he was on my side. Simon is a big phony. That’s kind of why I’m testifying against him/her. My lawyer says it will help my civil case against Mr./Ms. Simon and the criminal case against me if I can prove that Levi was a credible threat to my life and that my teacher encouraged me to defend myself against him the best way I could. My lawyer also says we’ll get millions of dollars suing Mr./Ms. Simon, Principal Rogers, and this school district for not protecting me and for pushing me to “fight back.” That will be the only good thing to come out of this.

Statement of Lee Davenport

The idea that teachers should be armed in the classroom is insanity. As the Chief Security Officer of the Great Lakes Municipal School District, I know there's an effort here in Ohio to give free gun classes to teachers but I think that is sick. As a concerned, responsible parent, I don't want my child going to school looking at a teacher with a holstered gun while teaching the ABCs. How distracting is that? Would you want your six-year-old exposed to that everyday? It would destroy their innocence. The classroom just gets more dangerous. What is this world coming to?

If anything, we need to have more lockdown drills, so if something happens, teachers will know how to best protect their students. We can invest in better metal detectors. We need to monitor our entrances better, make sure suspended students, irate parents, rival gang members, and other individuals who mean somebody harm don't have easy access inside our schools, or on the grounds for that matter. There need to be more anti-bullying measures taken. We need to educate students about the dangers of firearms and other weapons, and, most importantly, teach them conflict resolution skills. An on-site school psychologist, like we used to have before layoffs, is also on my wish list. Students need someone to talk to, someone who can help them through some of their emotional challenges.

But, unequivocally, arming teachers is dangerous. They could be overpowered for their guns or the guns could go off, misfire, or cause an accidental shooting. And school shootings are so rare, that arming every teacher would create more problems than it would prevent. All these overzealous gun owners seem to have a secret desire to be James Bond or some kind of superhero. They watch entirely too many movies and cop shows. They need to indulge their fantasies some other way. But they are not allowed to bring guns into schools. I do not foresee this policy changing anytime in the near future. By the way, I was the one who tipped off the

police that Simon had a home arsenal. A student called me anonymously, right after the shooting, and said she thought Simon had a bunch of assault rifles that s/he was planning for some insurrection or terrorist attack of some kind. And they did find a lot of legal weapons. I'll bet the illegal ones were just hidden too well.

Mr./Ms. Simon broke the law every time s/he went to work with a gun in his/her briefcase. There are no provisions currently that allow teachers, whether they have a permit or not, to convey firearms into a school or any other Board of Education property. Of course, Mr./Ms. Simon was fired immediately after this incident even though many people think s/he is a hero of some sort. I had heard through the grapevine that this Simon character is a total gun nut. In fact, Principal Rogers actually told me that s/he knew Mr./Ms. Simon brought a gun to work every day, but when I asked Principal Rogers if that was true and whether I should follow up with Mr./Ms. Simon, Principal Rogers told me not to and said it was just an unsubstantiated rumor.

You could see, though, that Mr./Ms. Simon is obsessed with the Second Amendment. S/He would often wear Second Amendment paraphernalia – baseball caps, T-shirts, stuff like that – to class. Not very professional at all, in my humble opinion. But I'm against Casual Fridays. Call me old-fashioned. I still think teachers should wear dresses and suits and ties to work. When they stopped, I believe that led to students disrespecting teachers the way they do nowadays. Simon was lucky this time. A thousand things could have gone wrong.

Having more guns around is never a good idea. We are overrun by guns now. If a little kid throws a rock at another little kid, the solution is not to arm all the kids in the class with rocks.

Don't get me wrong. I support the Second Amendment. I even believe in conceal and carry. But there is a huge difference between my right to be armed to protect myself and my

family versus me being asked to perform a public safety function and protect the masses. That's for the police to do. I don't want the police teaching my kids long division either.

But even the police can't walk around without extensive psychological, mental and physical training. They are scrutinized for using a Taser, let alone their firearm. But we're asking the standard to be lowered to allow teachers to carry guns without all the psychological testing required of people whose number one job is to protect the rest of us? Asking schools to allow armed staff would be an "implementation nightmare." You're asking schools, in essence, to operate a quasi-law-enforcement agency, which is far beyond their expertise, far beyond their capacity. Their duty is to teach the kids. Period. Leave the security detail to the pros.

FOR THE DEFENSE

Statement of Teacher/Defendant Bobbie Simon

I've given two years of my life, my blood, sweat and tears to this godforsaken school. And this is what I get for all that sacrifice! This is a travesty! I saved a kid's life, probably a whole lot of kids' lives, and here I am having to defend myself for it? What kind of sense does this make? I had to go into my savings to pay for a lawyer and I've had my whole life turned upside down. Do you know how violated I feel now that the police and the FBI have ransacked my home, gone through all my stuff – even the freezer, the bread box, the back of the toilet, you name it, they put their grubby paws all over everything. Then they left this mess – who's going to pay to clean it up? – and confiscated all my firearms! That's the greatest insult of all. You don't do this to heroes. And I'm a hero! I've been on the cover of the Plain Dealer twice this week. I was on CNN, Fox News! People in Japan know about my heroics. Everyone knows the name Bobbie Simon now! But you people don't appreciate anything. Here, in Cleveland, they prosecute heroes. A radio host called me this morning asking me to comment on the fact that this punk is filing a \$10,000,000 lawsuit against me. Unfortunately they had to bleep out most of my comments, but you can imagine what I said. \$10,000,000?! That fool actually found a lawyer willing to sue me?! That's why I hate lawyers, and that includes these witch-hunting prosecutors out trying to make a name for themselves. There were three shooting homicides last night, and you guys have nothing better to do than prosecute me. Unbelievable! No appreciation. No respect. That's why as soon as this case is over, I'm getting the heck out of here and moving to Texas. They appreciate Second Amendment heroes in Texas!

They're trying to say that I pushed Avery into bringing a gun to school. Nothing could be further from the truth. During our studies about the Constitution and the Bill of Rights, I may have emphasized the Second Amendment and told the class that it was my favorite one. I may have given some examples of where defending oneself with firearms was one's constitutional right and duty. This was especially true during the Revolutionary War where we had to fight the Redcoats to gain freedom from Great Britain. That's why the Fourth of July is my favorite holiday. I may have told them about some other instances. But if Avery Williams interpreted my lectures to mean s/he could bring a gun to school and shoot up my classroom, then s/he is deeply disturbed and in need of some mental health treatment. Yes, I like guns, but I like them like a responsible citizen, not a lunatic, likes them.

As far as I'm concerned, the Second Amendment is my gun permit. But I still went and jumped through the hoops necessary to get that government-issued card. And I carry. Every day, everywhere, and I'm proud of it. If I had been in that movie theater in Aurora, Colorado where they were showing the Batman movie, I would have taken that fool out before he could kill 12 people and maim countless others. The only thing that can stop a bad guy with a gun is a good guy with a gun. That's what the NRA President says, and I agree wholeheartedly. You never know what can jump off, so you need good guys with guns to be everywhere – just in case.

Things are always jumping off at this school. It's crazy here. Principal Rogers is out of his/her mind if s/he thinks this is a well-run school. There are mobs and gangs roaming all over in the halls, between classes and during classes. If you saw the kinds of weapons that were brought into this school by students, it would blow your mind. Brass knuckles, knives, pipes, ropes, chains, box cutters. Lots of box cutters. That's what the girls like. I've taken stuff off kids myself and I'm not even security. Danny, the so-called security guard, Barney Fife I call him, was standing right there watching me break up a fight between two girls and taking the box

cutter from one of them. I got my hand cut up pretty good too. But better my hand than that other girl's face. See, I'm not afraid to make sacrifices for the greater good. I guess once a soldier, always a soldier.

This is not a safe school. Just because Principal Rogers had all these cheery murals painted all over the walls, and just because s/he started a tennis team, s/he's delusional enough to think s/he turned the school around. Looks can be deceiving. Between the peeling lead paint, the bad cafeteria food and the gangs, this school is hazardous to your health! Rogers is just worried about superficial things; s/he's overly concerned about his/her personal and professional image.

This place needs me and my gun. All of my colleagues should be armed, or at least some of them. I'll admit some of them are too nutty to be trusted with firearms. Truth be told, I wouldn't trust Principal Rogers with a pea shooter. If the students, or even some crazy intruders, know that teachers are armed, then they will think twice before starting something. You can't rely on security guards alone. What's one guard going to do in a whole school? You need a wall of resistance, people to cut the shooter off at the pass. A guard can't be in 30 different classrooms at one time. So all those students and teachers are just sitting ducks, defenseless. And our guard, Barney, I mean Danny, runs away from danger, not toward it.

Now, again, I'm not one of those lunatics who has a gun and will use it on someone who looks at me the wrong way or says the wrong thing. I'm responsible. My guns are for defense, not offense. I'm not unstable or crazy or irrational and I don't have a violent streak. But I will defend myself against anyone who pops off. It doesn't matter if that person is a kid or an adult. If they are positioning themselves to hurt me or someone else, then they are a target and they get what they get. They live with the consequences. I could have taken Avery Williams out. They would have taken him/her away in the coroner's van instead of the ambulance. But I didn't

shoot to kill, I shot to neutralize because deep down I feel a little sorry for that kid because the students do mess with him/her quite a bit. Kids are ignorant; they don't know how to respond to people who are "different." But a lesson should be learned here: if you try to shoot someone in my classroom, you have to get through me first.

Oh, yeah. I also never really threatened Avery either, although s/he's saying I did. There was a little incident, the day before the shooting, where s/he started yelling epithets at somebody while I was trying to teach the class. When the bell rang, I pulled Avery to the side and told him/her that if s/he had another outburst like that that I would "F" him/her up. Now obviously that didn't mean I was going to shoot him/her. If anything, I would have given him/her a detention or something. Avery's really stretching the truth to make him/herself look better.

But back to Principal Rogers. I also remember when some parent, mad about her punk kid getting suspended, came up to the school to beat up Principal Rogers right at the beginning of the school year. She was huge, drunk, and probably a little mentally ill. Don't ask me how she was able to get past our wonderfully competent security guard. But there she was and Danny was nowhere to be seen. Principal Rogers would have been picking his/her teeth up off the floor if I hadn't stepped in. I was able to get that woman out of the building. Then we called the police. You have to handle things right away. Who knows when the cops would have shown up? But Principal Rogers was really grateful to me that day. S/He wasn't calling me a crazy gun-freak then. Can't believe s/he's calling me that now. After all I do for this godforsaken school. I can't wait to get to Texas.

Statement of Jaye Jennings

I am one of the good guys who own guns. My four sons all own hunting rifles. I am a 57-year-old parent of four adult sons and a business owner who lives in Medina County.

I am testifying because Bobbie Simon is a friend of mine. We served in Iraq together and s/he is a great person, an asset to the community. I feel the media and our elected officials are at a level of hysteria over the recent school shootings, including the one here in Cleveland.

Yes, everyone would agree that anytime innocent people — be it children or college students, or for that matter anyone — are killed by a madman the nation should pause to mourn the loss. Our president and vice president, the mayor and school board members feel that by imposing stricter gun control laws that will make everything wonderful again. This is a feel-good Band-Aid that does not address the real problems.

In my opinion, part of the problem is the desensitizing of our kids through violent video games and misogynistic rap music. Parents allow doctors to prescribe mind-altering drugs because little Johnny seems a little anxious in school even though he really just suffers from a lack of parental love, supervision, discipline, and guidance. Then people don't respect life because the government permits doctors perform millions of abortions every year. No one cares about all those dead babies, just the ones that got shot dead by madmen with guns. Well, they're all precious to me.

I am a law-abiding citizen who happens to hunt and competitively shoot with an AR15 and hand guns. It's a hobby, and the government better not even think about confiscating my weapons. I've got a surprise waiting for any agent who walks through my door intent on doing so. I know for a fact that Bobbie's going to make sure s/he gets all they took from him/her back.

My kids have been brought up to be safe and responsible gun owners. I am passionate about the Second Amendment and gun ownership, as is my dear friend Bobbie. Remember,

we're the good guys. We're not trying to shoot up schools and movie theaters and Cracker Barrel restaurants. We want to stop the ones who want to shoot up schools and movie theaters and Cracker Barrel restaurants. Every time there's a shooting that the media takes great interest in, there are all these calls for outlawing guns. Well, if guns are outlawed, only outlaws will have guns. They act like there's no such thing as the Second Amendment.

None of this makes any sense at all. How do you prosecute an upstanding citizen, a veteran, a patriot, a wise teacher for doing what any red-blooded citizen who cares about humanity would do? Bobbie was in the right place at the right time and we should all be grateful that this unfortunate incident didn't turn into another Columbine. S/He feels bad about it, but s/he did what s/he had to do, and what's done is done. I saw Bobbie cry after shooting this kid in Iraq who had a bomb strapped to him. But s/he had to do what s/he had to do. Just like this time. Let's put policies in place to discourage students and crazy people from bringing guns to shoot up a bunch of folks. Arm the teachers! Heck, maybe even the school nurse, the secretary, or the custodian. Don't let people just be defenseless. When something goes down, you have to be ready or you'll be sorry. Having a firearm would be a better choice than diving in front of the bullets to protect the kids.

We have armed guards to protect our money and gold at banks and all federal buildings have armed guards and metal detectors – the good ones that detect tin foil on your sandwich. Our president has an entourage of Secret Service agents heavily armed keeping him and his family in a bubble. We broadcast that our schools are no-weapon zones making them an easy target for carnage and mayhem. I don't get it, why do we not protect our innocent children at the same level we protect our money? It doesn't make sense that we guard our gold with guns and we guard our kids with hope. If they required teachers to have a gun on them at all times, I'll bet you would see 99% less violence in our schools. Kids probably wouldn't even run in the halls

anymore. Fear whips everyone into shape, gets everyone in line. That's why we never should have taken God or corporal punishment out of the schools. If we hadn't, we probably wouldn't have to have a debate about guns in school. Everyone would toe the line. We obviously don't have the money to put armed guards in every school in the nation, so the common sense answer is to arm the teachers. They are the first line of defense.

So let's get some good guys with guns to stop the bad guys with guns. Bobbie Simon is one of the good guys. Let him/her go!

Statement of Ali Montanez

I've sat in Mr./Ms. Simon's class for three months and listened to every word that comes out of his/her mouth. That teacher is a hilarious! No matter what the topic is – Reconstruction, the Industrial Revolution, the Civil Rights Movement, whatever – s/he always manages to steer the discussion to guns and the Second Amendment and about how we all have a God-given right to protect ourselves with guns, assault rifles, tanks, rocket launchers, or whatever is on hand. S/He wears all these pro-gun clothes and jokes about having a piece on him/her wherever s/he goes. I didn't think s/he meant school though! It was all interesting and funny at first. But now I just want him/her to just stick to the basic facts so I can pass the OGT. But I still enjoy the class. Social studies was boring to me before getting in Mr./Ms. Simon's class. It's hard to get into because everyone wants to take it. I had to wait three semesters to get in. Mr./Ms. Simon is very popular, even though some people think s/he might be a bit of a gun nut.

But the school is full of gun nuts. Everybody, with the exception of myself, is always trying to buy a gun out the back of someone's van. I know at least 50 kids who have their own guns and brag about it. They all think they're a character in Grand Theft Auto or Gears of War or something. Some have even brought them to school. I've seen them. I didn't tell anyone because I'm not a snitch, and snitches get stitches. But on any given day, there are probably half a dozen kids sitting up in class strapped. Lots of times I think they're unloaded and they just have them "for show." But isn't that scary? That's why I'm glad for teachers like Mr./Ms. Simon. There're probably a lot of other teachers who bring guns to school too. We just don't know about it because they didn't shoot anyone – yet!

I know if I were a teacher, I'd have a gun with me at all times. There are some crazy people up in this school. They assault teachers, get all up in their face. I wouldn't take that if I was a teacher. You stick a gun in their face, and you get respect. Sad but true.

Now on the day in question, I saw Levi messing with Avery as usual. I think Levi took Avery's cell phone or something. Avery just went off. S/He got up and pulled this big gun out from under his/her camouflage jacket (of course it has to be camouflage, huh?), and pointed it at Levi. The whole class screamed and moved away to the other side of the room. Desks and chairs were getting knocked down. People were pushing each other to get out of the line of fire. It was madness! Complete chaos! Some people were calling 911 on their phones. Some people were recording the whole thing. Kind of ignorant, I think.

Mr./Ms. Simon was the only one who stayed calm. S/He yelled at Avery to put the gun down. S/He said it a couple of times. Levi was trying not to act scared. As a matter of fact, he kept aggravating Avery. He said, "What you gonna do, shoot me? That's not even a real gun! Does your mom know you have her water pistol?" Stuff like that.

The next thing I know, Mr./Ms. Simon had a gun in his/her hands. Avery didn't even see it. S/He was looking at Levi. His/Her hand was shaking. You could tell s/he was nervous. Levi kept egging him/her on, obviously didn't think Avery would shoot him. Or he thought the gun was unloaded. Big mistake.

Avery pulled the trigger. The bullet went wild. It was way over Levi's head. It hit the window behind him. Probably hit some poor bird outside. Levi was shocked but he laughed. It was nervous laughter. A split second later, Simon shot Avery, hit him/her right in the shoulder. Avery dropped the gun and fell on the floor. Levi went over to Avery and was about to stomp him/her, but stopped when Simon turned the gun on him and told him to leave Avery alone.

It took the police forever to get there, like 20 minutes. Someone said Channel 19 got there quicker than the police did. I never did see the security guard. I'm sure he was hiding somewhere scared. Not that I can blame him. Who runs toward gunfire?

That's why it's a good thing Mr./Ms. Simon was there to defuse the situation. No telling how many people Avery would have shot if Simon hadn't shot him/her. It could have been Columbine all over again. It's a shame s/he lost his/her job and an even bigger shame that s/he's being prosecuted. We need more teachers like Mr./Ms. Simon.

EXHIBITS



Exhibit #1: Signs at posted at school entrances



Exhibit #2: Classroom window (wide view)

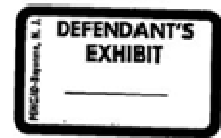


Exhibit #3: Classroom window (close view)

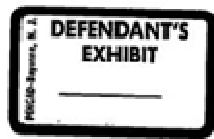


Exhibit #4: Avery Williams' shoulder wound



Exhibit #5: Guns found at Defendant Bobbie Simon's home

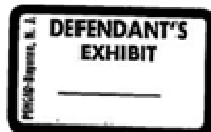


Exhibit #6: Sign outside Defendant Bobbie Simon's home



Exhibit #7: Shirt Defendant Bobbie Simon was wearing on day of shooting

facebook    Search for people, places and things 

Avery Williams

Update Status  Add Photos/Video

What's on your mind?

FAVORITES

- News Feed
- Messages
- Events
- Photos

GROUPS

Create Group...

APPS

- App Center
- Pokes

I want to add your birthday

Games Feed 20+

PAGES

- Pages Feed 20+
- Like Pages 13
- Create a Page...

MORE ▾

Like · Comment · 23 minutes ago · 
 Write a comment...

Levi Cooper added a photo

Like · Comment · Share · 27 minutes ago via mobile · 

  like this.

  Ha ha dude thats hilarious! I want a shirt like that. Man, whered u get it?
23 minutes ago · Like ·  1

 Write a comment...

IFF'S BIT

ANT'S BIT

Exhibit #8: Screenshot of Avery Williams' Facebook page Oct. 20, 2012

ENHANCE YOUR CASE

- Use relevant exhibits to establish certain important facts.
- Determine if there are any facts to impeach (discredit) a witness's testimony.
- Determine if there are any facts that can be used to show a witness's testimony was motivated by bad or impure reason (for example, is Avery Williams trying to make him/herself look more like a victim of bullying to help his/her civil case against Simon, Rogers, and the school?).
- Try to manipulate facts to conform to your theory of the case (for example, was Principal Rogers aware that Bobbie Simon carried a gun to school regularly and might s/he be trying to shift the blame for not following up?).

COMPETITION INSTRUCTIONS

The Mock Trial Competition will be held on Friday, May 3, 2013 (Law Day) at the Cleveland Municipal Court in the Justice Center, 1200 Ontario Street, Cleveland, Ohio. There will be two trial sessions: 9:00 – 11:00 a.m. and 12:00 – 2:00 p.m. The awards ceremony will take place following the second session at approximately 2:15 p.m. Lunch will not be provided; however, special arrangements with the cafeteria at the Justice Center have been made and it will be open and available from 11:00 until 12:00 if students wish to purchase lunch. There is no limit to the number of teams from each school that may enter the competition. The purpose of the competition is to maximize student involvement and give as many students who wish to participate the opportunity to do so.

In order for the necessary arrangements for the competition to be made, each school must submit its entry form(s) to Gayle Gadison at the Cleveland School Administration Building on or before March 22, 2013. Forms may be submitted by fax to (216) 858-6502 or by email to Lavora.G.Gadison@cmsdnet.net. A separate entry form for each team should be submitted.

Team Membership and Roles

At the competition a mock trial team may consist of a minimum of six and up to 17 students.* In this case, there are three possible witnesses who may be called for the prosecution and three for the defense. Each team may use up to five attorneys for each side played. Each team will also have a bailiff who will also serve as the timekeeper. Thus, the possible roles for each team are as follows:

Prosecution	Defense
1. Attorney (Opening Statement)	2. Attorney (Opening Statement)
3. Attorney (Witness Examination)	4. Attorney (Witness Examination)
5. Attorney (Witness Examination)	6. Attorney (Witness Examination)
7. Attorney (Witness Examination)	8. Attorney (Witness Examination)
9. Attorney (Closing Argument)	10. Attorney (Closing Argument)
11. Prosecution (Witness #1)	12. Defense (Witness #1)
13. Prosecution (Witness #2)	14. Defense (Witness #2)
15. Prosecution (Witness #3)	16. Defense (Witness #3)
17. Bailiff/Timekeeper	

* Please include any additional student who participates in the training for the mock trial competition regardless of whether they play a role at the actual competition so they may also receive a Certificate of Participation.

Although each team is encouraged to maximize student participation, at the discretion of each teacher, attorney roles may be combined and one student may, for example, conduct more than one witness examination or do both a witness examination and make one of the arguments. Each team, however, must use all three witnesses, use at least two attorneys for each side played and supply a bailiff/timekeeper. Only the attorney who conducts the direct examination of a witness may make objections during the cross-examination of that witness.

The student presentations should be the work product of the students themselves – guided, of course, by the teacher and team legal advisor(s). It is important that the opening, direct examination, testimony or whatever the particular presentation should be the student's work rather than having the student simply read the words prepared by an adult.

At competition, each team will conduct the mock trial twice, once as the prosecution and once as the defense.

Time Limits

A trial is scheduled to last no longer than two hours. The presiding judge will enforce the time limit and may at his or her discretion grant a time extension in the interest of fairness. Each team will supply a student timekeeper who will show cards with 2:00, 1:00 or 0:00 minutes remaining. The time clock will stop for objections and responses.

Conduct During Trial and Trial Sequence

The presiding judge controls the courtroom. The judge may ask anyone to leave, if necessary. During the trial, teachers, legal advisors and all other observers may NOT talk to, signal or otherwise communicate with or coach their teams. This restriction includes any breaks during the trial.

Only furnishings and equipment available in the courtroom may be used during the trial. At the conclusion of the trial, all tables, chairs and any other courtroom furniture and equipment are to be returned to the place where they were found at the beginning of the proceedings. Nothing is to be removed from the courtroom.

The bailiff will open court by saying:

All rise. Hear ye, hear ye, this Honorable Court for the City of Cleveland is open pursuant to adjournment. All having business before this Honorable Court draw near, give attention and you shall be heard. You may be seated.

All judges are to be addressed as "Judge _____" or "Your Honor."

The bailiff will swear in each witness by saying:

Please raise your right hand. Do you solemnly swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth and that your testimony will comply with the Rules of the Cleveland Mock Trial Competition?

Witnesses answer and sit down. They will remain in the courtroom during the trial. No motion for separation of witnesses will be entertained.

Opening Statements (3 minutes maximum)

The presiding judge should ask counsel for the prosecution if they wish to make an opening statement. Prosecution counsel should introduce themselves and their team members and the roles they are playing and then present the opening statement. The same procedure is used with defendant's counsel.

Testimony of Witnesses

The prosecution will present its case first. The presiding judge will ask counsel to call his/her first witness. The witness will then testify in the following examination sequence:

Direct (6 minutes)

Cross (5 minutes)

Redirect (2 minutes)

Re-cross (2 minutes)

The prosecution will call its remaining two witnesses using the same sequence for each.

Upon conclusion of the prosecution's case, the prosecution will rest. The presiding judge will then ask counsel for the defense to call his/her first witness. The defense team will follow the same sequence as noted above.

Witnesses are bound by their written statements. If there is inconsistency or ambiguity between the case summary and the witness statement, the witness is to rely upon the information contained in the witness statement.

Fair extrapolations are permitted if they are consistent with the facts contained in the case materials and do not materially affect the witness's testimony. If a witness invents an answer that is likely to affect the outcome of the trial, the opposition may object. Teams that intentionally and frequently stray outside the case materials may be penalized.

If an attorney who is cross-examining a witness asks a question, the answer to which is not included in the witness's written statement, the witness is free to "create" an answer as long

as it is not contrary to the statement. If the answer is contrary to the statement, the cross-examination attorney may impeach, or in other words, attack the credibility of the witness.

The trial proceedings are governed by the Modified Rules of Evidence found in this casebook.

Closing Argument (4 minutes maximum for each)

The prosecution will be allowed 2 minutes rebuttal.

Objections

In addition to evidentiary objections, objection may be made during trial by an attorney who believes that any rule set forth in the Competition instructions has been violated. As with evidentiary objections, the objection must be made as soon as the claimed violation occurs. If no objection is made at the time of the claimed violation, the attorney knew or should have known of the violation at that time, the right to object is waived.

The presiding judge may make rulings as appear appropriate. All judges will not interpret the rules and guidelines in the same way. The judge's decision, however, is final and no appeals procedure is available.

Conclusion of Trial

The judicial panelists will retire to chambers to discuss their decision and complete the score sheets upon conclusion of the trial and return it to the competition coordinator. The scoring panelists will announce the outstanding witness and attorney awards, discuss the highlights of their performances, and present their certificates. The judicial panelists may discuss the case and make remarks to the teams at the conclusion of the trial but will not discuss the scoring.

The bailiff will close the proceedings at the judicial panelists' signal with:

"All rise. This honorable court is hereby adjourned."

Judging and Scoring

Each trial will be presented before a judicial panel consisting of a judge or magistrate and two attorneys. The judge or magistrate will serve as the presiding judge and will control the

courtroom and rule on motions and objections. The two attorneys will serve as scoring panelists and evaluate the teams and individual performances.

The trial will be judged based on team performance, not the merits of the case. The two scoring panelists and the presiding panelist will separately rate the Plaintiff and Defendant teams, assigning points from 1-10 (1 being Poor, 2-3 being Weak, 4-5 being Fair, 6-7 being Good, 8-9 being Very Good, and 10 being Exceptional) for each part of the performance (e.g. Opening Statement, Plaintiff First Witness, etc.), including a Team Performance score of 2-20 for overall performance. If, based on point totals, the scoring panelists agree on the winner, that team has won the trial. In the case of a tie, the presiding judge will act as tie-breaker: the team deemed by the presiding judge to be the winner based on his/her point totals is the winner of the trial.

Teams that have won both of the two trials will be deemed “Finalists.” Presiding judges’ point totals will be added to scoring judge’s totals for Finalists, and ranking among the finalists will be determined by overall point total. In the event of a tie, additional points will be added to team scores based on the awards for Outstanding Attorney and Outstanding Witness, with one point added for each award won. The team with the highest score will be declared the winner of the competition. The scores will be tabulated and the winners announced at the conclusion of the competition. After the competition, non-Finalists will be informed of their overall performance (e.g. winner of first but not second trial). Finalists will be informed of their ranking among the other Finalist teams.

To aid in the determination of Outstanding Attorney for the Prosecution, Outstanding Attorney for the Defense, and Outstanding Witness of the Competition to be presented at the awards ceremony, judges may award an attorney and/or witness who they feel has given an extraordinary performance 1-3 bonus points. Individuals who receive the highest scores total, including all three judges’ scores and any bonus points, will be recognized in those three categories respectively.

The score for team performance is based on the team’s overall substance and style. Scores should be awarded based on the scale on the following page.

**All participants must be mindful that the regular business of the court
will be continuing during Mock Trial Competition.**

Conversations and noise in the hallways should be limited accordingly.

CLEVELAND MOCK TRIAL COMPETITION OFFICIAL MOCK TRIAL SCORESHEET GUIDELINES

TRIAL RESULTS: The trial should be judged based on team performance, not the merits of the case. The two scoring panelists should determine the winning team by adding their point totals. If, based on point totals, the scoring panelists agree on the winner, that team has won the trial. In the case of a tie, the presiding judge should act as tie-breaker: the team deemed by the presiding judge to be the winner based on his/her point totals is the winner of the trial.

1. **Points:** Scores (you must use whole numbers) should be awarded based on the following scale:

Points	Performance	Criteria for Evaluating Student Performance
10	Exceptional	Exhibits mastery of all procedural and substantive elements
8-9	Very Good	Proficient in most procedural and substantive elements. Significantly advances team effort.
6-7	Good	Moderately comfortable with procedural and substantive elements of the trial. Helps team as a whole.
4-5	Fair	Lacks polish. Imprecise use of procedural and substantive trial elements.
2-3	Weak	Does not advance team effort. Minimal comprehension of procedural and substantive elements.
1	Poor	NO evidence of procedural and substantive elements.

2. **Scoring Factors for individual performances (1-10 points per individual performance possible):**
- Ability to think well on feet, be logical, keep poise under duress
 - Ability to sort out essential from the nonessential and use time effectively to accomplish major objectives
 - Mastery of elements of the case: utilization of all resources to contribute to the team's position
 - Quality of communication in terms of fluency, persuasiveness, clearness and understandability
 - Depth of performance in terms of knowledge of task and materials
3. **Scoring Factors for team performance (2-20 points possible):** Factors to consider when judging a team's performance include:
- The development and validity of the case theory (Did the plaintiff/defendant team establish a theme for their argument? Was the theme valid?)
 - The choice and development of case strategy (Did the plaintiff/defendant team select the appropriate form of questioning used for direct examination and cross-examination?)

- c. The degree of a team's persuasiveness (Was the team's case carefully crafted and skillfully delivered? Were team members prepared and direct in their roles?)
- d. The quality and authenticity of the student's own work product (Does the student presentation appear to be the work product of the student?)

4. Bonus Points for exceptional attorneys and witnesses (1-3 additional points possible but NOT mandatory):

Judges at their discretion may award an attorney and/or witness who they feel has given an extraordinary performance 1-3 bonus points, to be indicated in the Bonus Points section of the score sheet along with the student(s) name(s). These points are NOT mandatory, and are NOT to be included with the team's overall score. The points are to aid the Competition Coordinators in determining which students have received the best scores of the Competition considered as a whole in the categories of Outstanding Attorney for the Prosecution, Outstanding Attorney for the Defense, and Outstanding Witness for the Competition.

- 5. Penalties:** Points should be deducted from the Team Performance Score for:
- a. Consistently abusing the time limits (1 point)
 - b. Failing to use attorneys as prescribed (1 point)
 - c. Intentionally and frequently straying outside the case materials (1 point)
 - d. Communication during trial between team members and their teacher, legal advisor or any observer (1 point)

Assessing Witness/Attorney Performances

1. In judging the performance of witnesses, you should consider whether the witness was:
 - a. Believable in his/her characterizations and convincing in testimony
 - b. Articulate and responsive
 - c. Observant of proper courtroom decorum
 - d. Knowledgeable of the case facts and theory of the team's case
 - e. Faithful to the case facts and did not invent new facts
2. Qualities that determine the top performance by an attorney include:
 - a. A creative, organized, and convincing presentation
 - b. Observation of proper courtroom decorum
 - c. A clear understanding of the facts, issues, law and rules of Cleveland Mock Trial
 - d. Ability to apply authority and law to facts
 - e. Proper phrasing of questions and objections
 - f. Appropriate presentation style
 - g. Poise and ability to think on his/her feet, extemporaneous (not scripted) delivery, eye contact (ability to proceed without reading from prepared materials)

OUTSTANDING WITNESS AND ATTORNEY: You should select one outstanding witness and one outstanding attorney for the trial, irrespective of team performance, based on scoring panelists' point totals for each individual at trial. This selection should be made without regard to any Bonus Points awarded for exceptional performances.

OFFICIAL TRIAL SCORESHEET: The presiding judge should complete the Official Trial Scoresheet (as these points may be used in the event of a tie, and may be used to determine ranking among Finalists) and return it to the Competition Coordinator immediately after the completion of both trials.

DO NOT ANNOUNCE THE WINNING TEAM OR GIVE SCORING INFORMATION.

Sample Scoresheet

2013 CLEVELAND HIGH SCHOOL MOCK TRIAL SCORE SHEET

ALL 3 Judges (2 Scoring and 1 Presiding) MUST complete and return score sheet to competition coordinator upon completion!

TRIAL ONE or TRIAL TWO

(Please circle)

Judge's Name: _____
Presiding / Scoring (Please circle)

Plaintiff/Prosecution:

Defense:

(Please write School AND Team Names)

Using a scale of 1 to 10, rate the Plaintiff and Defendant in the categories below.

In the Team Performance Score, rate the team's overall performance using a scale of 2 to 20.

DO NOT use fractional points or award zero points. NO TIES ALLOWED in TOTAL POINTS.

Poor 1	Weak 2-3	Fair 4-5	Good 6-7	Very Good 8-9	Exceptional 10
Opening Statement			Plaintiff	Defense	
Plaintiff Attorney (Name):			(1-10)		
Defense Attorney (Name):				(1-10)	
Plaintiff First Witness (Name of Character):					
Direct Attorney (Name):			(1-10)		
Cross Attorney (Name):				(1-10)	
Witness Performance (Name of Student):			(1-10)		
Plaintiff Second Witness (Name of Character):					
Direct Attorney (Name):			(1-10)		
Cross Attorney (Name):				(1-10)	
Witness Performance (Name of Student):			(1-10)		
Plaintiff Third Witness (Name of Character):					
Direct Attorney (Name):			(1-10)		
Cross Attorney (Name):				(1-10)	
Witness Performance (Name of Student):			(1-10)		
Defense First Witness (Name of Character):					
Direct Attorney (Name):				(1-10)	
Cross Attorney (Name):			(1-10)		
Witness Performance (Name of Student):				(1-10)	
Defense Second Witness (Name of Character):					
Direct Attorney (Name):				(1-10)	
Cross Attorney (Name):			(1-10)		
Witness Performance (Name of Student):				(1-10)	
Defense Third Witness (Name of Character):					
Direct Attorney (Name):				(1-10)	
Cross Attorney (Name):			(1-10)		
Witness Performance (Name of Student):				(1-10)	
Closing Arguments					
Plaintiff Attorney (Name):			(1-10)		
Defense Attorney (Name):				(1-10)	
Team Performance Score			(2-20)	(2-20)	
Point Deductions (if any) for penalties: Subtract					
Column Totals: Add Scores Down in Each Column			Plaintiff Total (13-130)	Defense Total (13-130)	
TOTAL POINTS					
OPTIONAL bonus points for exceptional performances (NOT to be included in TOTAL POINTS)					
Student name:			(1-3)	(Attorney)	
Student name:			(1-3)	(Witness)	

SIMPLIFIED OHIO RULES OF EVIDENCE

Rules Unique to Mock Trial

I. Invention of Facts and Extrapolation (special rules for the Mock Trial Competition)

The object of these rules is to prevent a team from “creating” facts not in the material to gain an unfair advantage over the opposing team.

Invention of Facts - Direct Examination. On direct examination the witness is limited to the facts given in his/her own written statement. If the witness goes beyond the facts given (adds new facts or speculates about facts), the testimony may be objected to by the opposing counsel as speculation or as invention of facts outside the case materials. If a witness testifies *in contradiction* of a fact given in the witness statement, opposing counsel should impeach the witness’s testimony during cross-examination. [See also, Competition Instructions, “Testimony of Witnesses—Guidelines.”]

Invention of Facts - Cross-Examination. If on cross-examination a witness is asked a question, the answer to which is not contained in the facts given in the witness statement, the witness may respond with any answer, so long as it is responsive to the question, does not contain unnecessary elaboration beyond the scope of the witness statement, and does not contradict the witness statement. An answer which is unresponsive or unnecessarily elaborate may be objected to by the cross-examining attorney. An answer which is contrary to the witness statement may be impeached by the cross-examining attorney. [See also, Competition Instructions, “Testimony of Witnesses—Guidelines”].

Example

The limits on fair extrapolation apply only to cross examination, and no extrapolation is permitted on direct examination.

An accident reconstruction expert (Mr. Smith) has testified that the accident was caused by the failure of the defendant to maintain an assured clear distance ahead. The defendant has claimed that he was undergoing a type of epileptic seizure when the driver ahead stopped abruptly. The accident reconstructionist testifies that even a person experiencing this kind of epileptic seizure would have seen the car brake abruptly.

1. Unnecessary Elaboration

Cross-examiner: “But you’re not a neurologist, are you, Mr. Smith?”

Mr. Smith: “As a matter of fact, I have a Ph.D. in Neurology from Johns Hopkins University and have written extensively on epileptic seizures..”

If there is no hint in the case materials that Mr. Smith has expertise in neurology, it would be regarded as an unnecessary elaboration

2. Elaboration necessitated by the Question

Cross-examiner: “Have you testified before as an expert in accident reconstruction, or is this the first time that you have ever testified?”

Mr. Smith: “I have testified in 27 trials.”

It may be reasonable for the expert to claim he has testified in 27 trials, if his age and background make that plausible, even if there is nothing in the case materials to reflect an answer to that question. It is an elaboration necessitated by the question.

II. Scope of Examinations

Scope of Direct Examination An attorney questions the witness she/he has called to stand. On direct examination an attorney may inquire as to any relevant facts of which the witness has first-hand, personal knowledge.

Scope of Cross Examination The scope of cross-examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness's statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.

Redirect Examination After cross examination, additional questions may be asked by the direct examining attorney, but such questions are limited to matters raised by the opposing attorney on cross-examination. Just as on direct examination, leading questions are not permitted on redirect.

Comment: If the credibility or reputation for truthfulness of the witness has been attacked successfully on cross-examination, the attorney whose witness has been damaged may wish to ask questions to "rehabilitate" the witness (save the witness's truth-telling image). Redirect examination may also be used to strengthen a positive fact that was weakened by the cross-examination. Redirect examination is not required. A good rule to follow is: if it isn't broken, don't fix it.

Examples:

1. ***Cross-examination of physician called by Plaintiff in murder case:***

Attorney: Doctor, you testified on direct that the defendant died of arsenic poisoning, correct?

Witness: Yes.

Attorney: Isn't it true that you have a deposition in which you testified that you did not know the cause of death?

Witness: Yes, that's true.

Redirect:

Attorney: Doctor, why did you testify in your deposition that you did not know the defendant's cause of death?

Witness: I had not yet received all of the test results which allowed me to conclude the defendant died of arsenic poisoning.

2. ***Cross-examination:***

Attorney: Doctor, isn't it true the result of test X points away from a finding of arsenic poisoning?

Witness: Yes.

Redirect:

Attorney: Doctor, why did you conclude that the defendant died of arsenic poisoning even though test X pointed away from arsenic poisoning?

Witness: Because all of the other test results so overwhelmingly pointed toward arsenic poisoning, and because test X isn't always reliable.

Comment: Neither one of these redirect examinations should have been conducted unless the attorney had a good idea of what the witness's response would be. As a general rule, it is not advisable to ask a question if you don't know what the answer will be.

Re-cross Examination After redirect, additional questions may be asked by the cross examining attorney, but such questions are limited to matters raised on redirect examination. Re-cross is not mandatory and should not be used simply to repeat points that have already been made.

Example:

Assume the cross-examination in the example above has occurred. A good re-cross-examination would be the following:

Attorney: Doctor, isn't it true that when you gave your deposition you had received all of the test results except the result of test X?

Witness: Yes, that's true.

Comment: The cross-examining attorney would then argue in the closing argument that the doctor testified in his deposition that he did not know the cause of death at that time and the only test result received after the deposition pointed away from arsenic poisoning.

III. Hostile Witness Rule- Mode and Order of Interrogation and Presentation

1. **Control by court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

2. **Scope of cross-examination.** Cross-examination shall be permitted on all relevant matters and matters affecting credibility.

3. **Leading questions.** Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the testimony. Ordinarily, leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

4. **When is a witness hostile?** "Where a witness is an unwilling one, hostile to the party calling him, or stands in such a situation as to make him necessarily adverse to such party, his examination in chief may be allowed to assume something of the form of cross-examination, at least to the extent of allowing leading questions to be put to him." 44 OH Jurisprudence 3d 241, "hostile witness" §. 869

The issue is whether the witness's hostile attitude toward the party calling him/her is likely to make the witness reluctant to volunteer facts helpful to that party. Hostility may be demonstrated by the witness's demeanor in the courtroom, by other facts and circumstances, or by a combination thereof. Whether a witness is hostile is confided to the sound discretion of the presiding judge.

IV. Voir Dire

Voir Dire examination of a witness is not permitted.

V. No offer of proof

No offers of proof may be requested or tendered.

Article I. GENERAL PROVISIONS

RULE 101. Scope of Rules: Applicability; Privileges; Exceptions

Applicability. These rules govern proceedings in the Ohio Mock Trial Program and are the only basis for objections in the Ohio Mock Trial Program

- **No directed verdict or dismissal motion may be entertained.**

Article IV. RELEVANCY AND ITS LIMITS

RULE 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

RULE 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

Evidence which is not relevant is not admissible.

RULE 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay

(A) Exclusion mandatory. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

(B) Exclusion discretionary. Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence.

RULE 404. Character

Character evidence. Evidence of a person's character, other than his/her character for truthfulness, may not be introduced. Evidence about the character of a party for truthfulness or untruthfulness is only admissible if the party testifies.

Article VI. WITNESSES

RULE 601. General Rule of Competency

Every person is competent to be a witness.

RULE 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that S/he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

RULE 607. Who May Impeach

(A) Who may impeach. The credibility of a witness may be attacked by any party except that the credibility of a witness may be attacked by the party calling the witness by means of a prior inconsistent statement only upon a showing of surprise and affirmative damage. This exception does not apply to statements admitted pursuant to Evid.R. 801(D)(1)(A), 801(D)(2), or 803.

RULE 608. Evidence of Character and Conduct of Witness

Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

RULE 611. Mode and Order of Interrogation and Presentation

(A) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(B) Scope of cross-examination. For Ohio Mock Trial Rules, see Simplified Ohio Rules of Evidence (Section II).

(C) Leading questions. Leading questions should not be used on the direct examination of a witness. Leading questions are permitted on cross-examination. When a party calls a hostile witness interrogation may be by leading questions.

RULE 612. Writing Used to Refresh Memory

If a witness uses a writing to refresh his memory while testifying, an adverse party is entitled to have the writing produced at the hearing. He/she is also entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness.

RULE 616. Bias of Witness

In addition to other methods, a witness may be impeached by any of the following methods:

(A) Bias. Bias, prejudice, interest, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

(B) Sensory or mental defect. A defect of capacity, ability, or opportunity to observe, remember, or relate may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

(C) Specific contradiction. Facts contradicting a witness's testimony may be shown for the purpose of impeaching the witness's testimony.

Article VII. OPINIONS AND EXPERT TESTIMONY**RULE 701. Opinion Testimony by Lay Witnesses**

If the witness is not testifying as an expert, his/her testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of his testimony or the determination of a fact in issue.

RULE 702. Testimony by Experts

A witness may testify as an expert if: (1) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony; and (2) The witness's testimony is based on reliable scientific, technical, or other specialized information.

RULE 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by him/her or admitted in evidence at the hearing.

RULE 704. Opinion on Ultimate Issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable solely because it embraces an ultimate issue to be decided by the trier of fact.

RULE 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give his/her reasons therefore after disclosure of the underlying facts or data. The disclosure may be in response to a hypothetical question or otherwise.

Article VIII. HEARSAY**RULE 801. Definitions**

The following definitions apply under this article:

(A) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an assertion.

(B) Declarant. A "declarant" is a person who makes a statement.

(C) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(D) Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at trial or hearing and is subject to cross-examination concerning the statement, and the statement is (a) inconsistent with his testimony, and was given under oath subject to cross-examination by the party against whom the statement is offered and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (c) one of identification of a person soon after perceiving him, if the circumstances demonstrate the reliability of the prior identification.

(2) Admission by party-opponent. The statement is offered against a party and is (a) his own statement, in either his individual or a representative capacity, or (b) a statement of which he has manifested his adoption or belief in its truth, or (c) a statement by a person authorized by him to make a statement concerning the subject, or (d) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (e) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy upon independent proof of the conspiracy.

RULE 802. Hearsay Rule

Testimony which is hearsay is inadmissible.

RULE 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter unless circumstances indicate lack of trustworthiness.

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing, mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by testimony.

RULE 804. Hearsay Exceptions; Declarant Unavailable

(A) Definition of unavailability. "Unavailability as a witness" includes any of the following situations in which the declarant:

(1) is unable to be present or to testify at the hearing because of death or then-existing physical or mental illness or infirmity;

(B) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant, while believing that his or her death was imminent, concerning the cause or circumstances of what the declarant believed to be his or her impending death.

(2) Statement against interest. A statement that was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the declarant believed it to be true. A statement tending to expose the declarant to criminal liability, whether offered to exculpate or inculpate the accused, is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

RULE 805. Hearsay Within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Article IX. AUTHENTICATION AND IDENTIFICATION

RULE 901. Requirement of Authentication or Identification

(A)General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

EXAMPLES OF COMMON OBJECTIONS AND TRIAL PROCEDURE

I. Procedure for Objections

A. An attorney may object if he/she believes that the opposing attorney is attempting to introduce improper evidence or is violating the Simplified Rules of Evidence. The attorney wishing to object should stand up and object at the time of the claimed violation. The attorney should state the reason for the objection, and if possible, cite by rule number the specific rule of evidence that has been violated. (Note: Only the attorney who questions a witness may object to the questions posed to that witness by opposing counsel.) The attorney who asked the question may then make a statement about why the question is proper. The judge will then decide whether a question or answer must be discarded because it has violated a simplified rule of evidence (objection sustained), or whether to allow the question or answer to remain in the trial record (objection overruled). Objections should be made as soon as possible; however, an attorney is allowed to finish his/her question before an objection is made. Any objection that is not made at the time of the claimed violation is waived. When an objection has been sustained, the attorney who asked the question may attempt to rephrase that question. Judges may make rulings that seem wrong to you. Also, different judges may rule differently on the same objection. Always accept the judge's ruling graciously and courteously. Do not argue the point further after a ruling has been made.

II. Examples of Common Objections

The following are examples of common objections. This is not a complete list. Any objection properly based on the simplified Ohio rules of evidence is permitted:

1. ***Irrelevant evidence.*** "Objection. This testimony is irrelevant."
2. ***Irrelevant evidence that should be excluded:***
"Objection. This is unfairly prejudicial (or a waste of time) and should be excluded because..."
3. ***Leading question:*** "Objection. Counsel is leading the witness."
(Remember, leading is only objectionable if done on direct or redirect examination).
4. ***Narrative Answer:*** "Objection, this witness's answer is narrative" Commonly used on direct examination when a witness's answer has gone beyond the scope of the initial question
5. ***Non-responsive Answer:*** "The witness is nonresponsive, your honor. I ask that this answer be stricken from the record."
The witness's answer does not answer the question being asked. Commonly used by the cross-examining attorney during cross examination.
Example:
Attorney: Isn't it true that you hit student B?
Witness: Student B hit me first. He/she was asking for it, acting like a jerk and humiliating me in front of all my friends.
Attorney: Your Honor, I move to strike the witness's answer as non-responsive and ask that he/she be instructed to answer the question asked. (Another option is to impeach the witness with prior testimony if he/she testified in his his/her deposition that he/she hit student B.)
6. ***Beyond the scope of cross or redirect:*** "Objection. Counsel is asking the witness about matters that were not raised during the cross or redirect examination."
7. ***Improper character testimony:*** "Objection. This is testimony about character that does not relate to truthfulness or untruthfulness."
8. ***Improper opinion:*** "Objection. Counsel is asking the witness to give an expert opinion, and this witness has not been qualified as an expert." *OR* "Objection. Counsel's question calls for an opinion which would not be helpful to understanding the witness's testimony (or which is not rationally based upon what the witness perceived.)"

9. ***Invention of facts:*** "Your Honor, we object on the basis that opposing counsel's question seeks evidence that is outside the record in this case. Witness X has never given testimony in this case concerning..." If the witness gives testimony on direct that is beyond the scope of materials, the cross-examining attorney should say "move to strike the testimony concerning...as beyond the scope of the case materials."

Example:

If witness X did not personally see arsenic in the medicine cabinet of the decedent's wife, he cannot testify that she had arsenic in her medicine cabinet.

10. ***Lack of personal knowledge:*** "Objection." The witness has no personal knowledge that would allow her to answer this question.
11. ***Speculation:*** "Objection. The witness is speculating/this question calls for speculation." A hybrid between lack of personal knowledge and improper opinion.
12. ***Hearsay:*** "Objection. Counsel's question calls for hearsay." If a hearsay response could not be anticipated from the question, or if a hearsay response is given before the attorney has a chance to object, the attorney should say, "I ask that the witness's answer be stricken from the record on the basis of hearsay."

Example:

Witness X testifies that "Mrs. Smith said that the decedent's wife had a bottle of arsenic in her medicine cabinet." This testimony is inadmissible if offered to prove that the decedent's wife had a bottle of arsenic in her medicine cabinet, since it is being offered to prove the truth of the matter asserted in the out-of-court statement by Mrs. Smith. If, however, the testimony is offered to prove that Mrs. Smith can speak English, then the testimony is not hearsay because it is not offered to prove the truth of the matter asserted in the out-of-court statement. However, the testimony is only admissible if Mrs. Smith's ability to speak English is relevant to the case.

Comment:

Why should the complicated and confusing condition be added that the out-of-court statement is only hearsay when "offered for the truth of the matter asserted"? The answer is that hearsay is considered untrustworthy because the speaker of the out-of-court statement has not been placed under oath and cannot be cross-examined concerning his/her credibility. In the previous example, Mrs. Smith cannot be cross-examined concerning her statement that the decedent's wife had a bottle of arsenic in her medicine cabinet, since witness X, and not Mrs. Smith has been called to give this testimony. However, witness X has been placed under oath and *can* be cross-examined about whether Mrs. Smith actually made this statement, thus demonstrating that she could speak English. When offered to prove that Mrs. Smith could speak English, witness X's testimony about her out-of-court statement is not hearsay.

Remember, there are responses to many of these objections that the examining attorney can make after the objection is raised and he or she is recognized by the judge to respond.

III. Other Trial Procedures

A. Opening Statement

An opening statement has been defined as "a concise statement of [the party's] claim [or defense] and a brief statement of [the party's] evidence to support it." Judge Richard M. Markus, ***Trial Handbook for Ohio Lawyers*** (Thomson-West, 2006 Edition), §7:1, p. 305. A party seeking relief should indicate the nature of the relief sought. It may be useful to acknowledge the applicable burden, or burdens, of proof. An opening statement is not supposed to be argumentative, and should be used by attorneys to present their theories of the case. Legal authorities can be cited, to show what issue or issues are before the court for decision. It is appropriate to lay out what the attorney expects the evidence will show, but the wise attorney will be conservative in this regard.

The most important aspect of the opening statement is to frame the issues. The attorney wants to frame the issues so that there is a compelling narrative (the theory of the case) in his/her client's

favor into which all the favorable facts and all favorable legal authority neatly fit. A well-crafted opening statement tells a story that will dominate the trial that follows.

B. Closing Statements

Closing statements, “are permitted for the purpose of aiding the [finder of fact] in analyzing all the evidence and assisting it in determining the facts of the case.” Markus, op. cit., §35:1, at p. 1013. In a bench trial (to a judge, rather than to a jury), the closing statement is also the time to argue the law to the judge.

The attorney should point out to the court that his/her side has proven everything that it promised to prove, while pointing out that the other side failed to prove what it promised it would. It can now be shown how the evidence that was presented fits into the narrative (the theory of the case) that was introduced in opening statement, which, in turn, applying the law, compels a result in that side’s favor. Remind the court what that favorable result is; i.e., the particular relief your client is seeking from the court.

On occasion, your evidence won’t survive an objection, or the attorney’s best witness will be forced to equivocate on an important point on cross-examination. When this occurs adjustments have to be made to the closing statement to fit the evidence actually presented in the trial.

The closing statements are the final opportunities to persuade the judge. In oral presentation, the statements having the most impact are the first statements, and the final statements. The attorney should try to make the first and last things said in closing argument the most vivid and persuasive, while reserving those points that have less emotional impact, but need to be said, for the middle of the statement.

C. Direct Examination - Form of Questions.

Witnesses should be asked neutral questions and may not be asked leading questions on direct examination. Neutral questions are open-ended questions that do not suggest the answer and that usually invite the witness to give a narrative response. A leading question is one that suggests to the witness the answer desired by the examining attorney and often suggests a “yes” or “no” answer.

Examples:

1. ***Proper direct examination questions:***
 - a. What did you see?
 - b. What happened next?
2. ***Leading questions (not permitted on direct):***
 - a. Isn’t it true that you saw the defendant run into the alley?
 - b. After you saw the defendant run into the alley, you called the police, didn’t you?

D. Cross Examination - Form of Questions

An attorney should usually, if not always, ask leading questions when cross-examining the opponent’s witness. Open-ended questions tend to evoke a narrative answer, such as “why” or “explain,” and should be avoided. (Leading questions are not permitted on direct examination because it is thought to be unfair for an attorney to suggest answers to a witness whose testimony is already considered to favor that attorney’s side of the case. Leading questions are encouraged on cross-examination because witnesses called by the opposing side may be reluctant to admit facts that favor the cross-examining attorney’s side of the case.) However, it is not a violation of this rule to ask a non-leading question on cross-examination.

Examples:

1. ***Good leading cross-examination question:***

Isn’t it true that it was almost completely dark outside when you say you saw the defendant run into the alley? (This is a good question where the witness’s statement says it was “almost completely dark,” but a potentially dangerous question when the statement says it was “getting pretty dark out.”)
2. ***Poor cross-examination question:***

How dark was it when you saw the defendant run into the alley? (The witness could answer, “It wasn’t completely dark. I could see him.”)

E. Opinion Testimony by Non-Experts

For mock trial purposes, most witnesses are non-experts. If a witness is a non-expert, the witness’s testimony in the form of opinions is limited to opinions that are rationally based on what the witness saw or heard and that are helpful in explaining the witness’s testimony. Non-experts (lay witnesses) are considered qualified to reach certain types of conclusions or opinions about matters which do not require experience or knowledge beyond that of the average lay person. Note, however, that the opinion must be *rationally* based on what the witness saw or heard *and* must be helpful in understanding the witness’s testimony.

Examples:

1. Witness X, a non-expert, may testify that the defendant appeared under the influence of alcohol. However, it must be shown that this opinion is *rationally* based on witness X’s observations by bringing out the facts underlying the opinion, e.g., the defendant was stumbling; his breath smelled of alcohol; his speech was slurred. If witness X thinks the defendant was under the influence because he had a strange look in his eye, then the opinion should not be permitted because it is not sufficiently rational and has potential for undue prejudice.
2. Witness X, a non-expert, may not testify that in his opinion the decedent died of arsenic poisoning, since this is not a matter that is within the general knowledge of lay persons. Only an expert, such as a forensic pathologist, is qualified to render such an opinion.

F. Opinion Testimony by Experts

Only persons who are shown to be experts at trial may give opinions on questions that require special knowledge beyond that of ordinary lay persons. An expert must be qualified by the attorney for the party for whom the expert is testifying. Before a witness can testify as an expert, and give opinions in the area of his/her expertise, a foundation must be laid for his/her testimony by introducing his/her qualifications into evidence. In a sense, every witness takes the stand as a non-expert, and the questioning attorney must then establish the witness’s expertise to the court’s satisfaction for the witness to be able to testify as an expert. This is usually accomplished by asking the expert himself/herself about his/her background, training and experience.

Example:

Attorney: Doctor, please tell the jurors about your educational background.

Witness: I attended Harvard College and Harvard Medical School.

Attorney: Do you practice in any particular area of medicine?

Witness: I am board-certified forensic pathologist. I have been a forensic pathologist for 28 years.

It is up to the court to decide whether a witness is qualified to testify as an expert on a particular topic.

G. Refreshing Recollection (Rule 612)

If a witness is unable to recall information in his/her witness statement or contradicts the witness statement, the attorney calling the witness may use the witness statement to help the witness remember.

Example: Witness cannot recall what happened after the defendant ran into the alley or contradicts witness statement on this point:

1. Mr./ Mrs. Witness, do you recall giving a statement in this case?
2. Your Honor may I approach the witness? (Permission is granted.)
I’d like to show you a portion of the summary of your statement, and ask you to review the first two paragraphs on page three.
3. Having had an opportunity to review your statement, do you now recall what happened after the defendant ran into the alley?

H. Impeachment (Rule 607)

On cross-examination, the cross-examining attorney may impeach the witness. Impeachment is a cross-examination technique used to demonstrate that the witness should not be believed. Impeachment is accomplished by asking questions which demonstrate either (1) that the witness has now changed his/her story from statements or testimony given by the witness prior to the trial, or (2) that the witness's trial testimony should not be believed because the witness is a dishonest and untruthful person.

Impeachment differs from the refreshing recollection technique. Refreshing recollection is used during direct examination to steer a favorable, but forgetful, witness back into the beaten path. Impeachment is a cross-examination technique used to discredit a witness's testimony.

Examples:

1. ***Impeachment with prior inconsistent statement:***

Attorney: Mr. Jones, you testified on direct that you saw the two cars *before* they actually collided, correct?

Witness: Yes.

Attorney: You gave a deposition in this case a few months ago, correct?

Witness: Yes.

Attorney: Before you gave that deposition, you were sworn in by the bailiff to tell the truth, weren't you?

Witness: Yes.

Attorney: Mr. Jones, in your deposition, you testified that the first thing that drew your attention to the collision was when you heard a loud crash, isn't that true?

Witness: I don't remember saying that.

Attorney: Your Honor, may I approach the witness?

(Permission is granted.)

Mr. Jones, I'm handing you the summary of your deposition and I'll ask you to read along as I read the second full paragraph on page two, "I heard a loud crash and I looked over and saw that the two cars had just collided. This was the first time I actually saw the two cars." Did I read that correctly?

Witness: Yes.

Attorney: Thank you Mr. Jones.

2. ***Impeachment with prior dishonest conduct:***

Attorney: Student X, isn't it true that last fall you were suspended from school for three days for cheating on a test?

Witness: Yes.

I. Introduction of Physical Evidence (Rule 901)

Generally, physical evidence (objects) must be relevant and authentic (shown to be what they appear to be) in order to be admissible. Exhibits are generally presented to the court through witness testimony. Specifically, for mock trial purposes, all exhibits contained in the case materials have already been stipulated as admissible evidence and may not be altered to give either side an unfair advantage. This means that both sides have agreed that all exhibits are admitted. Therefore, it is not necessary to demonstrate through a witness's testimony that an exhibit is authentic, an accurate representation or admissible, nor is it necessary to move the court for the admission of the physical evidence.

Example:

Attorney: Your honor, we have marked this one-page document as Plaintiff Exhibit 1 (or Defendant's Exhibit A). Let the record reflect that I am showing Plaintiff Exhibit 1 (or Defendant's Exhibit A) to opposing counsel. (Exhibit is shown to opposing counsel.) Your Honor, may I approach the witness?

Judge: You may.

Attorney: Witness X, I'm showing you what has been marked as Plaintiff Exhibit 1. Do you recognize that exhibit?

Witness: Yes.

Attorney: Could you explain to the Court what that is?

Witness: It's a map of the accident scene.

(At this point, the attorney may ask the witness any additional relevant questions about the exhibit, and then give it to the judge.)

Courtroom pointers to make the most of your presentation:

- I. Dress appropriately: Your personal appearance affects the way people view you and your performance. Appropriate dress means business (not casual) dress. For young women, this could be a dress, a skirt and jacket, or slacks and a jacket. If a skirt or dress is worn, be conservative in choice of hem length. For young men, it could be slacks and a shirt and tie, or slacks with a jacket and tie, or a suit.
- II. Pre-trial preparation
 - A. Arrive at the courtroom at least 15 minutes early so that you can acquaint yourself with the layout, make any necessary adjustments and be ready to start the trial exactly on time.
 - B. The prosecution team sits at the table closest to the jury box, and the defense team sits at the other table.
 - C. Attorneys should neatly organize their materials on the tables. Get rid of all unnecessary papers, briefcases, pencils and other clutter.
 - D. Witnesses should seat themselves in separate areas of the spectators' section.
 - E. Make sure no team members are chewing gum.
- III. Posture: Participants should remember that from the elevated bench, the judge has a good view of the entire courtroom. Your seating posture has a definite impact on the judge's impression of you. Attorneys especially need to be conscious of how they are seated. Sit straight but not so stiff as to be uncomfortable. Put your feet flat on the floor or cross your legs in a professional manner. Avoid nervous mannerisms, such as shaking your leg or tapping your pencil.
- IV. Decorum
 - A. Be polite and courteous to the judges, both presiding and scoring.
 - B. Always stand when talking in court and when the judges enter or leave the room.
 - C. Always refer to the presiding judge as "Your Honor" and accept rulings graciously and politely even if they are not in your favor.
 - D. Behave courteously and respectfully toward the opposing team before, during and after the trial.
 - E. Be cordial to witnesses.
 - F. Emotions are not banned from the courtroom; however, they must be controlled. It is okay (and may even be part of your trial strategy) to be appropriately indignant, puzzled, etc., but uncontrolled outbursts or wild theatrics are not appreciated by the judging panels and may cost you valuable points.

- V. Speak effectively
- A. All participants should speak clearly and carefully enunciate each word.
 - B. For attorneys, all speaking is done from a standing position. For witnesses, speaking is done in a seated position from the witness stand.
 - C. If you are an attorney and are addressed by the court, stand promptly before responding.
- VI. Deliver your best opening statement or closing argument
- A. Organize any materials before beginning.
 - B. Rise slowly.
 - C. With confidence, walk slowly, yet deliberately, to the podium or the area from which you will deliver the opening or closing.
 - D. Assume good speech-making posture. Your feet should be set apart a bit and your weight balanced on the balls of your feet.
 - E. Before your first word, look the judge directly and say, “May it please the court” and begin to speak directly to the members of the jury (scoring judges).
 - F. Try for a conversational tone in your voice. Speak to the judges in a clear voice that is slow enough and loud enough for them to follow your ideas without straining.
 - G. Avoid using slang and always use your very best vocabulary.
 - H. Use variety in your delivery. You can emphasize major points in several different ways, e.g. pause before an important idea, raise your volume slightly to accentuate an important idea, or slow down to draw attention to an important idea.
 - I. Natural gestures are always good to emphasize ideas. They will come instinctively if your focus is on talking to the judges. Do not force gestures and always avoid repetitive or unnecessary gestures.
 - J. Be aware that judges may interrupt during your closing statement and ask you a question. Pause, listen carefully to the question, then answer to the best of your ability. The most important thing is to maintain your poise.
 - K. When you have concluded your presentation, say, “Thank you, your honors,” while looking directly at the presiding judge. Pause briefly and then take your seat. Show no signs of relief and do not immediately turn to speak to co-counsel. Always maintain that aura of poise and confidence.

VII. Question witnesses skillfully

- A. Always rise to do the questioning.
- B. You may have questions written out, but be ready to adapt when objections are made or when a witness does not respond as you had expected.
- C. Speak slowly and clearly.
- D. Listen to the witness's response. S/he may not say what you had anticipated and thus you may have to insert or reword questions for clarification.
- E. If opposing counsel makes an objection, stop speaking and give them the floor.
- F. Be prepared to respond to an objection. Do so as articulately and confidently as you possibly can. Do not ramble. Not all judges will expect you to respond, and, in fact, sometimes you will have to ask if the judge will allow you to do so.
- G. If the judge rules against you on an objection, show no signs of dismay. Simply proceed with another question. The key is to maintain your poise.
- H. If you are stumped on how to proceed, ask the judge if you may confer with your co-counsel. Make the conference brief. Use this conference technique only when absolutely essential. Judges may become frustrated if you hold up the trial too often. Remember: this conference counts as part of your time allotment.
- I. Never ask a question to which you do not know the answer.
- J. When you have finished your questioning, say, "No further questions, your honor," and take your seat in a confident manner.

VIII. Be a great witness

- A. Generally, all witnesses will be sworn at the beginning of the trial as one group.
- B. When you are called, go to the witness stand. When the judge indicates that you may take your seat, respond by saying, "Thank you."
- C. Seat yourself in the witness box in a professional manner.
- D. Position yourself so that you can comfortably give your responses to the scoring judges.
- E. Speak loudly and clearly and in a manner best fitting the character you are portraying.
- F. Stay in character!
- G. Do not allow any unnecessary movement or gestures to distract from your testimony.
- H. When an objection is made, immediately stop talking.
- I. Wait until the objection is decided and even then do not respond until the attorney doing the questioning indicates that you should do so.
- J. Do not attempt to answer a question that you do not understand. Ask for clarification to be sure that you understand the question that is being asked.

- K. Never argue with the judge or the opposing counsel. Keep a cool head!
 - L. Do not leave the witness box until the judge directs you to “step down.”
 - M. Walk slowly and confidently back to your seat.
 - N. Do not speak to anyone along the way or when you are seated.
- IX. Maintain your demeanor during recess and debriefing
- A. Rise when the judges leave the courtroom; maintain order and quiet while they are out; rise when the judges re-enter the courtroom.
 - B. Listen quietly and respectfully during the debriefing. When all the judges have concluded their comments, feel free to applaud, not only for them, but also for your opponents and yourselves.
- X. Exhibit good sportsmanship: Walk over to the other team members. Shake hands and introduce yourself. It is always appropriate to congratulate them on a particularly good aspect of their performance. Remember, good sportsmanship is part of being a good winner. Not everyone can win the competition, so learn as much as you can and have fun while participating in the project.

**CLEVELAND MUNICIPAL COURT
CLEVELAND METROPOLITAN BAR ASSOCIATION
MOCK TRIAL COMPETITION**

TEAM ENTRY FORM

It is necessary that we timely receive this form, one for each team you are entering, so that we will know how many judges and courtrooms will be needed for the competition and so that we may prepare the Certificates of Participation for the students. Please provide the names of any student who may be participating whether or not their participation has been confirmed.

Due April 22, 2013

Send to:

Gayle Gadison
Cleveland Board of Education, Social Studies
Administration -- 600 South
1380 East Sixth Street
Cleveland, Ohio 44114
Phone: (216) 858-4270
Fax: (216) 858-6502
Email: Lavora.G.Gadison@cmsdnet.net

School: _____

Teacher: _____

Team No. _____

Names of students

(Please print legibly or attach a typed list, making sure to identify school and team on the top of the list):

1. _____

12. _____

2. _____

13. _____

3. _____

14. _____

4. _____

15. _____

5. _____

16. _____

6. _____

17. _____

7. _____

8. _____

9. _____

10. _____

11. _____

CLEVELAND MUNICIPAL COURT/
CLEVELAND METROPOLITAN BAR ASSOCIATION
MOCK TRIAL COMPETITION

SUBPOENA

IN THE CASE OF:

CITY OF CLEVELAND

-VS-

BOBBIE SIMON

To: Judge Lauren C. Moore
Cleveland Municipal Court
Courtroom 14-A
Cleveland, OH 44101-4984
Tel.: (216) 664-4973
Fax: (216) 664-6735

You are commanded to have to appear before the (name of school)
_____ mock trial team a (prosecutor, defense attorney, police
officer, victim advocate, social worker, probation officer, etc.) _____ on (date)
_____, at (time) _____ in Room _____ to answer questions
and present information to our mock trial team to assist us in our
preparation of the case. (Contact person) _____ should
be contacted at (contact number) _____ upon receipt of this
subpoena to confirm attendance and make arrangements.

By: _____

THE WRITING COMPETITION

Most judges will agree that writing effectively is perhaps the most important lawyering skill there is. While courtroom skills are essential, judges rely extensively on briefs and memoranda submitted by lawyers on behalf of their clients. It is through briefs and memoranda that legal issues are framed and argued. Judges frequently decide many cases, particularly in civil matters, solely on the briefs filed. Because the court believes that writing skills are at least as important as other lawyering skills promoted in the Cleveland Mock Trial Competition, this writing portion continues to be an important, and independent, component of the competition.

Once again, the writing competition this year is a solo competition and individual awards will be given. Although students are not required to participate, the court strongly encourages all students to participate. At a minimum, by writing on these issues, students will be better prepared to argue their respective positions at trial. Papers should be between four and ten pages in length. Please be conscientious about grammar, spelling, and neatness, as well as substantive content.

This year, students may write a persuasive essay on whether, based upon the evidence presented in the case material, Bobbie Simon should be found guilty or not guilty of the offenses charged. This would be similar to what attorneys would present in a closing argument to the jury at the conclusion of the case. They may also write about an actual case involving a student or teacher who brought a gun to school, or a sentencing memorandum for *The City of Cleveland v. Bobby Simon* using the assumption that s/he was convicted of one or more of the charges. Students may also choose to write a meaningful and insightful essay about any other aspect of bullying among teens or the debate over whether school officials and/or teachers should be armed on school grounds in order to protect themselves and their students.

The essays are due on Monday, April 22, 2013 and must be clearly marked with students' names and schools. The essays may be mailed, faxed, or emailed to:

Jessica Paine, Assistant Director of Community Programs & Information
Cleveland Metropolitan Bar Association
1301 East Ninth Street, Second Level
Cleveland, OH 44114
Fax: (216) 696-2413, Phone: (216) 696-3525, ext. 4462
Email: jpaine@clemetrobar.org